

TRADEMARK PUBLIC ADVISORY COMMITTEE
Crystal City Marriott
Arlington, Virginia

Thursday, March 1, 2001
1:22 p.m. - 4:19 p.m.

APPEARANCES:

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P R O C E E D I N G S

1
2 MILES ALEXANDER: My name is Miles
3 Alexander. I'm chair of the Trademark Public
4 Advisory Committee and this is the public
5 meeting of March 1, 2001, Crystal City
6 Marriott. We welcome all of USPTO personnel
7 and all of the public members of our
8 observing corps here, participating corps and
9 members of the T-PAC. This meeting is being
10 taped and therefore it will be very helpful
11 if anyone who speaks identify themselves by
12 name before speaking.

13 We will have a period for questions
14 and answers at the conclusion of the session
15 and during some of the presentations
16 depending upon the speaker's preferences.
17 I'd like to welcome everybody in whatever
18 capacity they're attending and introduce our
19 first presenter, our Commissioner for
20 Trademarks, Anne Chasser.

21 ANNE CHASSER: I'm going to give a

1 brief update on where we are in our
2 operations in terms of filings and where we
3 are in terms of our balanced score card. As
4 many of you know, the biggest news in our
5 operation is our workload. In 1999 we saw a
6 27 percent increase in filings over '98, and
7 the year 2000 again we saw another increase
8 of 27 percent over the previous year. We
9 ended the fiscal year with 372,000 trademark
10 classes.

11 The beginning of this fiscal year
12 through January -- you might want to turn to
13 the next slide. This slide shows the level
14 of filings. In the first quarter of this
15 fiscal year we saw a decrease in the level of
16 filings. Through January we saw a reduction
17 of 13 percent of our filings.

18 Historically when we look at trends
19 and graphs of how our filings come into the
20 office, there's actually no rhyme or reason
21 for the level of filing. Historically we do

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1 see a spike in the March filings, and you can
2 see from the chart that in March of 2000 we
3 saw a spike in filing which resulted in a 50
4 percent increase at that point in time over
5 the previous year.

6 We have adjusted our projections
7 for our level of filing this year where we
8 are expecting -- at this point we're
9 calculating a 20 percent increase over the
10 previous year, although that's subject to
11 change. So we're monitoring the level of
12 filings very closely and we'll keep you
13 apprised as new information is available to
14 us.

15 Next slide. We do have some good
16 news and that is that our electronically
17 filed applications are increasing. At the
18 end of the first quarter we saw about 21
19 percent of our overall filings we're
20 receiving electronically. So this is very
21 good for us as we are moving into an

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1 E-government environment in the Trademark
2 Office.

3 Next slide. This slide
4 demonstrates graphically the amount of time
5 it takes our customers to receive their
6 filing receipt in the paper version versus
7 the electronic version. Last March we were
8 able to move some resources. Resources
9 became available and we were able to move
10 some resources to our pre-exam area where we
11 were able to reduce the amount of time it
12 takes our customers to receive a filing
13 receipt from up to 108 days to 9 days at the
14 end of the fiscal year, and now we're showing
15 filing receipts received within 15 days. And
16 you can see from the graph here that of
17 course as we move to E-government, one of the
18 major advantages to our customers is
19 receiving filing receipts instantaneously and
20 that is the chart on the bottom.

21 Next slide. As far as staffing, as

1 you have no doubt read in the newspaper,
2 there is a freeze on federal hiring within
3 the government currently, and the position of
4 the administration is that the freeze in the
5 agencies would continue until a political
6 head of the agency is appointed. We were
7 aware that this might happen and at the end
8 of last fiscal year, we were pretty
9 aggressive -- the end of last fiscal year up
10 to January, we were aggressive in our hiring.
11 So our original plan for year 2002 was that
12 we'd have 900 employees and 425 examining
13 attorneys. Our current staff is 775
14 employees and 420 examining attorneys.

15 This current fiscal year we hired
16 85 employees and 60 of those were examining
17 attorneys. Our attrition to date in this
18 fiscal year as you can see from the graphic,
19 we've lost 35 employees and 23 of those were
20 examining attorneys. Right now due to our
21 current situation with the levels of filings

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1 going up, it's not advancing at the rate we
2 had anticipated plus financial
3 considerations. Our plan at this point
4 through the balance of this fiscal year is to
5 not replace any of those that are leaving.

6 Next graphic. This graphic shows
7 the relationship between the level of hiring,
8 our attrition and staff. Next slide. Last
9 year when we met we talked at great length
10 about the U.S. Patent and Trademark Office
11 functioning more like a business as a
12 performance based organization, result
13 driven, and I shared with you how we are
14 structuring our operation around five major
15 goals listed on this graphic. Our goals are
16 to enhance the quality of our products,
17 enhance the quality of our services, minimize
18 processing time, implement E-government and
19 then finally, employee satisfaction.

20 We operate under a balanced score
21 card. Our score card this year is structured

1 around our five goals and I'm going to report
2 to you some of the measurements that we use
3 reporting out on a quarterly basis to our
4 executive committee. This information is
5 also available to all of our customers and
6 the public via our web site as well.

7 Areas that would be of interest to
8 the public would be the -- in terms of the
9 quality of our products, we operate an
10 independent quality review function through
11 our office of quality review. We ended last
12 fiscal year with 3.4 percent error rate on
13 substantive errors affecting registrability.
14 In our first quarter you'll notice that the
15 error rate has gone up to 4.2 percent. Our
16 goal for the balance for the fiscal year is a
17 three percent error rate.

18 We're looking at this number very
19 carefully and attribute it to several
20 factors. One is that we had a major hiring
21 effort underway at the end of last fiscal

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1 year. Many new attorneys -- we weren't able
2 to hire until the second half of the fiscal
3 year so we have many new examiners. Also the
4 areas that are being examined are being
5 looked at very closely between the office,
6 the trademark operation and the office of
7 quality review so we expect that number to
8 improve by the end of the fiscal year.

9 And then the other measures you can
10 see is the missed references which seems to
11 be holding its own at 1.4. After my
12 presentation you'll have a presentation by
13 Mary Lee who is in our Office of Quality
14 Management and Training and she'll be talking
15 about our customer satisfaction survey.

16 Listed on this graph are key drivers in the
17 area of quality that are addressed through
18 our customer satisfaction survey and that is
19 conducted on an annual basis, but we look at
20 these key drivers as affecting that area of
21 improvement of quality of products and that

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1 as I said is on a yearly basis.

2 Our goal number two is to enhance
3 the quality of our services. One measure
4 that we are looking at very carefully based
5 again on our customer satisfaction survey is
6 the response time in our area of -- in our
7 Trademark Assistance Center, so that's our
8 help desk within the trademark organization.
9 You'll note at the end of last fiscal year we
10 were looking at a 23 percent customer service
11 level and that is measured by the length of
12 time it takes to answer the phone in that
13 area, if you answer within 20 seconds or
14 greater.

15 We again were able to move some
16 resources to that area and we're seeing an
17 improvement in the trademark assistance area.
18 At the end of the first quarter we saw an
19 improvement to 57 percent, and I'm happy to
20 report we're up to about 64. So we expect to
21 meet our target of an 80 percent response

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1 rate within 20 seconds by the end of this
2 fiscal year. Goal number three is minimizing
3 processing time. As a reference, we included
4 in the measure in the balanced performance
5 score card the number of first actions that
6 were completed last fiscal year versus the
7 anticipated target for '01 at 440,000.

8 You can see that we're a little off
9 on our first quarter because we should have
10 received 110,000 and we achieved 85,491. Our
11 pendency to first action, we ended the fiscal
12 year at 5.7 by the end of the first quarter.
13 Our first action pendency was at 6.1. Our
14 target is 6.6. Final disposal, we ended
15 fiscal year as you can see at 17.3 and we
16 were able to maintain that through the first
17 quarter.

18 Key driver in as I mentioned
19 earlier when we showed the graph, one of the
20 key driver's in minimizing processing time is
21 the number of days it takes to receive a

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1 filing receipt, and we track that very
2 closely because that was one of our key
3 drivers in our customer satisfaction survey.
4 As you know and as you have received support
5 from the Trademark Public Advisory Committee,
6 our move is towards E-government within the
7 trademark organization, and we wanted to
8 share with you the levels of filings that we
9 are receiving through our TEAS program
10 available through the internet.

11 I'm happy to report as I mentioned
12 earlier that by the end of the first quarter,
13 21 percent of our applications we were
14 receiving electronically. Just last week we
15 got a report that it's up to 24 percent so I
16 want to thank the public advisory for
17 supporting our drive to E-government, and it
18 appears as though it's picking up and we're
19 getting a greater response from the bar.

20 We did see an increase in the
21 number of lawyers that are using the TEAS,

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1 and our last figure shows that 34 percent of
2 the applications are now being submitted by
3 lawyers and attorneys. Our fifth goal is
4 enhancement of employee satisfaction and Mary
5 Lee will be sharing with you the results of
6 our employee satisfaction survey.

7 I'm pleased to report that in the
8 trademark organization our employee
9 satisfaction improved by 18 points in a
10 two-year period. In the 47 out of the 49
11 measures increased over the two-year period,
12 some as high as 30 percentage points. So
13 we're very pleased with the result of our
14 employee satisfaction.

15 Finally I wanted to update you on
16 some legislative issues. The Technical
17 Amendment Bill was introduced into the Senate
18 which provides for some minor technical
19 improvements, technical improvements with
20 regard to trademarks. The Technical
21 Amendment Bill amends Section 35A to delete

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1 the first reference to Section 43C to clarify
2 that only willful violation under Section 43C
3 will qualify for the damages available under
4 Section 35A. It also amends the act in
5 relationship to Sections 1E, A, F, 9C and 10B
6 to specify the appointment of a domestic
7 representative in oppositional rather than
8 mandatory.

9 Finally it clarifies the language
10 in Section 10 and that's the language that
11 was inserted by mistake from an earlier
12 amendment. It also updates the statutory
13 references to the Olympic legislation. And
14 finally the technical amendment changes the
15 titles of the Director and Under Secretary
16 back to Commissioner, and then the
17 Commissioner's patents and trademarks will
18 change back to Assistant Commissioner.

19 Finally Madrid protocol, and I
20 don't know if anything has happened since
21 this morning. On February 27th, both the

1 Senate and the House introduced the Madrid
2 legislation. And so that has been introduced
3 and we understand that both the USPTO and the
4 trademark community will continue to monitor
5 this. I have no other news on Madrid other
6 than it was introduced. Is there any other
7 information? Okay.

8 So and then finally I'd like to
9 report to the advisory committee on the
10 progress with our new campus. We did have a
11 ground-breaking on January 17th to the new
12 site, the Carlyle site, and the construction
13 will begin this spring, and then we just have
14 a couple graphics to show the new facility.
15 This is the layout of the overall plan with
16 six buildings on the campus, and the
17 trademark organization will be housed right
18 here in the A building so we'll be in the hub
19 of the activity in the new Carlyle site and
20 we have a graphic of the new facility. This
21 is the front and then the back which is the

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1 Eisenhower corridor graphic. That concludes
2 my report. I'd be happy to entertain any
3 questions you would have.

4 MILES ALEXANDER: Any questions
5 from the members of the T-PAC?

6 JOSEPH NICHOLSON: What's with the
7 historical findings in March, what's the
8 reason for that?

9 ANNE CHASSER: We don't know. When
10 you look at the graph, and I apologize for
11 not including that in the presentation, there
12 seems to be historically in the March month
13 seems to be -- it starts off slow no matter
14 the level of filings. So that's why we're
15 very eager to see what happens within the
16 next six to eight weeks in terms of where
17 we'll be at the end of the year on our filing
18 levels.

19 MILES ALEXANDER: Following up on
20 Joe Nicholson's question, Anne, what is the
21 prediction for the length of time of the

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1 hiring freeze and the impact that's likely to
2 have, and is it going to authorize
3 replacement based upon attrition or is it
4 going to authorize no replacement?

5 ANNE CHASSER: Well, right now our
6 immediate plans based on the information that
7 we have for this year's budget is to continue
8 the freeze on hiring through next year.
9 Hopefully next year we'll be able to hire to
10 attrition in 2002, but right now through the
11 end of this fiscal year '01, we are not
12 planning to replace attrition hiring.

13 MILES ALEXANDER: This is Miles
14 Alexander again. What sort of increase in
15 backlog do you think that's going to result
16 in in terms of time in processing
17 applications?

18 ANNE CHASSER: Well, right now we
19 currently have over 600,000 active classes in
20 our inventory through the office which is the
21 highest level of backlog that we have ever

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1 had in the history of the trademark
2 organization. It's our expectation, and
3 again, it depends on the level of filings
4 coming in currently. With the level of
5 hiring that we have and staffing and
6 examining attorneys, we are not able to
7 balance the number of applications that come
8 in on a monthly basis with those that go out.
9 So our expectation is that the backlog will
10 grow.

11 MILES ALEXANDER: Any prediction as
12 to length of time?

13 ANNE CHASSER: Of the pendency
14 issue?

15 MILES ALEXANDER: Yes.

16 ANNE CHASSER: Well, at our last
17 meeting we advised the public advisory that
18 we were in the final stages of negotiation of
19 a new contract with our examining attorney
20 union, Union 245. We did sign a contract at
21 the end of last -- just several weeks ago we

1 had the final signing. And part of that
2 contract is an awards system which would
3 encourage an enhanced productivity. We will
4 not see the result of that until the end of
5 March, but we're hopeful that that may help
6 us in terms of the productivity in terms of
7 getting cases out the door.

8 MILES ALEXANDER: The electronic
9 filing is not likely to affect that backlog,
10 is it?

11 ANNE CHASSER: Well, right now our
12 plans are and I reported last year that we
13 opened two E-Commerce law offices which were
14 established to examine only those
15 applications that are received
16 electronically. We have since opened up a
17 third E-Commerce law office and we're hopeful
18 that as we put more examining attorneys on
19 working on electronically filed applications
20 that we'll see the pendency in those
21 applications to go down. So I can't give you

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1 a month at this point what that would be.

2 MILES ALEXANDER: Any other
3 questions from members of the public or USPTO
4 personnel? If not, thank you very much,
5 Anne. Mary Lee, would you come up and share
6 with us your presentation on customer
7 satisfaction and employee satisfaction and
8 the role of T-PAC.

9 MARY LEE: Good afternoon. I sent
10 everybody electronically on the T-PAC copies
11 of the slides, the full set of customer
12 satisfaction, employee satisfaction so I'm
13 just going to do some high level overview
14 today. First of all I'd like to take the
15 opportunity to talk about a change that took
16 place in January which was adding training to
17 the Office of Quality Management, and I just
18 wanted to give you an idea of why we went
19 ahead and did that.

20 Probably the most important thing
21 is to try to do the linking. We collect a

1 lot of quality information, a lot of quality
2 data like Anne shared with you on her score
3 card like we have also for the patent
4 organization, and we collect a lot of
5 customer feedback information and we do a lot
6 of training. We do a lot of training for
7 especially first year employees, but there
8 hadn't been a lot of linkages between
9 collecting the data, doing the assessment and
10 educating our employees and making sure that
11 when we do educate our employees that we're
12 going back and making sure that education is
13 working and improving the quality. So that's
14 one of the objectives that we have for our
15 new office, and hopefully we will accomplish
16 that within the next short period of time.
17 We just became the Office of Quality
18 Management and Training in January.

19 As I move into our data, I'd like
20 to introduce Greg Mullen. He's here with me
21 from the Center of Quality Services which is

1 the office in the Office of Quality
2 Management and Training which collects the
3 data both from the customers and from the
4 employees. And so if you have any specific
5 questions or anything comes to you later when
6 you review the information I sent you
7 electronically, Greg is a wonderful person to
8 e-mail, greg.mullen@uspto.gov. You can get
9 him any time to ask any specific questions
10 you might have.

11 Overall the trends in customer
12 satisfaction for trademarks, you can see that
13 in the 2000 survey when you compare to the
14 '99 there was a number of areas where there
15 was increases, some significant, more than
16 six percent. There was a number of areas
17 that went down. Overall it was kind of a
18 balance between the two. If you go to the
19 next slide this shows the '98, '99 and 2000
20 overall results. Basically the satisfaction
21 rate was definitely an increase from 63

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1 percent to 69 percent from the '98 to '99.
2 And even though it went down to 65 percent in
3 the year 2000, that's not a statistically
4 significant change. The reason for that is
5 the number of surveys that were actually
6 answered. We sent out over 1,000 surveys.
7 There were 400 that came back which was about
8 a 33 percent response rate.

9 JOSEPH NICHOLSON: On what basis
10 did you select who received a survey?

11 MARY LEE: It's a randomly selected
12 group of customers taken from the database,
13 just randomly selects them and sends them
14 out. The good news here is the percent of
15 the customers that are dissatisfied is pretty
16 low at 14 percent and that states a constant.
17 So a few more moved into the neutral
18 category, but we don't have a lot of
19 dissatisfied customers in the trademark
20 organization.

21 Anne talked a little bit about the

1 key drivers and they are reported on her
2 score card. You really look at this and they
3 come out in three main categories. The
4 timeliness categories which is the area where
5 we have probably the least satisfaction in
6 the 2000 numbers and I think we've explained
7 that pretty clearly. There's a lot of
8 reasons for that based on the filing rates
9 and things like that.

10 The quality of service. The
11 quality of service is about average or above
12 average so that's an improvement. If you
13 look at the quality of products which would
14 be for instance B4, clearly written
15 communications and positions of the examining
16 attorneys, that's at 77 percent. That's
17 considered pretty high. Fairness of the
18 examination at 73 percent. Efficiency of the
19 examination process at 52 percent. It needs
20 improvement, but it's increasing or it did
21 decrease a little bit, but those are areas

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1 that -- quality of products is something
2 that's doing quite well.

3 In addition to looking at the
4 actual numbers that come in, our customers
5 have a way of doing a lot of write-ins and we
6 get a lot of information in addition to the
7 actual answering of the questions from the
8 write-in comments. And again, if you look at
9 these, and I know you can't read these in the
10 back, but if you look at these comments,
11 again, they fall into the three main
12 categories. The quality of products which is
13 the issuing refusals at the top. That's
14 something we need to concentrate our efforts
15 on. Solving problems, complaint handling,
16 that's a problem in the USPTO as a whole,
17 it's a problem in the trademark organization,
18 and again, the timeliness issues.

19 If you look at the last one,
20 develop an action plan to extend the number
21 of applicants using electronic filing,

1 obviously that's something that we've been
2 talking about, that's something the trademark
3 organization is trying to do. And I think
4 when we do that, it will help in all three of
5 them, service, quality of products and
6 timeliness areas.

7 JOSEPH NICHOLSON: I might
8 interrupt you again. Following up on my last
9 question, the random sampling, are you
10 sending these to the actual applicants or to
11 the filing correspondent which in some cases
12 is a law firm?

13 MARY LEE: Which would be whichever
14 name shows up in TRAM which would be wherever
15 we would mail it to. If it was pro se and
16 they were handling, it would go to the
17 applicant and it would go to the attorney.

18 GREG MULLEN: It's a random
19 sampling of correspondent address.

20 JOSEPH NICHOLSON: Filing
21 correspondent?

1 GREG MULLEN: Yes.

2 MILES ALEXANDER: I think the full
3 report indicated that law firms represented
4 three-quarters of the response.

5 LOUIS PIRKEY: I had a question.
6 Was the sampling done the very same way in
7 '98, '99 and 2000?

8 GREG MULLEN: Yes.

9 LOUIS PIRKEY: And the questions
10 were --

11 GREG MULLEN: There was a few
12 modifications to the questionnaire, but the
13 basic questionnaire itself stayed the same.

14 MILES ALEXANDER: Would you
15 identify yourself?

16 GREG MULLEN: I'm sorry, Greg
17 Mullen.

18 MARY LEE: We try to look at the
19 survey review and make sure it's still
20 pertinent and sometimes some questions
21 change, but those wouldn't be trended against

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1 each other if they were questions changed.
2 Any more questions on the customer piece?
3 Then I turn to the employee piece and as I
4 said to Howard at lunch, ready Howard? We
5 have very good news to report here. The
6 employees are extremely happy in the
7 trademark organization and Howard would like
8 to agree with me there for the record, right
9 Howard?

10 HOWARD FRIEDMAN: I think everyone
11 would like to hear the presentation.

12 MARY LEE: Okay. Just trying to
13 lighten it up.

14 HOWARD FRIEDMAN: Me too.

15 MARY LEE: Overall satisfaction is
16 at 67 percent on satisfaction with the job.
17 We have two questions that we ask as sort of
18 a general code where one is satisfaction with
19 the job and the other is overall satisfaction
20 with the USPTO. And you can see that the
21 trademark organization was at 67 percent

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1 satisfaction with the job and 59 percent
2 overall satisfaction with the USPTO. This
3 represented -- there was 712 people that
4 could have possibly responded to this survey.
5 We had 415 responses so this was about a 58
6 percent response rate.

7 When you look at the key driver and
8 trend that will drive that overall
9 satisfaction number, this is what the
10 contractor tells us the questions that
11 actually drive those overall satisfaction
12 numbers are, enjoy the work I do, proud of
13 the work I do, those types of things are
14 overall satisfaction. And as Anne said in
15 her report, you can see that between '98 when
16 we did our last survey and 2000, the
17 trademark organization increased by 18
18 percent in both of those categories so I
19 think this is phenomenal.

20 JOSEPH NICHOLSON: Is this just the
21 trademark side or --

1 MARY LEE: Yes; just trademark.

2 JOSEPH NICHOLSON: Just as a matter
3 of curiosity, is there any significant
4 difference in terms of morale on the patent
5 side that you're aware of?

6 MARY LEE: Overall I think
7 trademarks came out higher if I'm correct.

8 GREG MULLEN: The whole
9 organization showed significant increases
10 throughout the agency, but there were patents
11 as well as the administrative areas like CFO
12 all showed increases from the '98 survey.

13 HOWARD FRIEDMAN: But the data
14 doesn't break-out -- I mean, there are two
15 bargaining units at work and the data doesn't
16 separate the attorneys from the support
17 staff?

18 MARY LEE: No; and the reason for
19 that is -- and we had a lot of discussion
20 when we were putting this survey together.
21 The reason for that is we were trying to

1 identify in groups of people that were large
2 enough so we could have some break-outs and
3 there was no way of actually doing that. We
4 have some demographics by grade, but that
5 really doesn't help me because it doesn't
6 necessarily say which bargaining unit you're
7 in.

8 MILES ALEXANDER: Do you mean the
9 employee satisfaction could include examiners
10 and cleaning crew together?

11 MARY LEE: Employee satisfaction
12 overall numbers, that would be overall for
13 the trademark organization so that included
14 both examining attorneys and technical
15 support staff and supervisors.

16 MILES ALEXANDER: Why would you not
17 be able to break-out categories by the
18 computer?

19 MARY LEE: When we ask the
20 questions, the demographic section, we didn't
21 ask you to identify your job specifically, we

1 asked you to identify your grade. And the
2 reason we did that was because we wanted to
3 be able to report data in -- it was all
4 confidential data so you had to have a
5 certain number of people to report the data,
6 and there wouldn't be enough people in some
7 of those areas if we broke out by bargaining
8 unit so it was a decision that we made.

9 MILES ALEXANDER: These basically
10 breached the confidence of some groups
11 because they were so small?

12 MARY LEE: Because if you were in
13 an area and you're the only tech support in
14 that area, people could say, oh, you answered
15 that question kind of thing so we wanted to
16 make it so that nobody could find themselves
17 or nobody could find you in a particular
18 report-out.

19 MILES ALEXANDER: Do we lose
20 something by not having a separate system
21 which examiners could be identified or only

1 one particular group which would be of a
2 usual significance in the overall makeup of
3 the respondents? In other words, lump the
4 lot together, but what portion of the
5 employees are the examining quorum?

6 MARY LEE: In some of the business
7 units it could be non-attorneys like in some
8 of the pre-exam or whatever functions. We
9 have a lot of questions on our survey that
10 deal with your first line supervisor, and
11 there was some concerns that we wanted the
12 data to be able to be reported at a low
13 enough level to be useful, but at a high
14 enough level not to be able to identify who
15 answered the question or have anybody think
16 that you could identify so people would feel
17 more comfortable answering those questions.
18 So there was a lot of decisions and
19 discussion around how we asked the questions.
20 And this may not have been the best way, we
21 might have to revisit it the next time, but

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1 for this time this is how it ended up turning
2 out.

3 MILES ALEXANDER: If you took the
4 examining corps as a whole which is 50
5 percent of the makeup of the office, would
6 having only the examining core identify
7 themselves in the responses endanger the
8 candor of the responses because of the
9 ability to identify break-out of that group
10 in any way individually? In other words, a
11 way of accomplishing what you want to do and
12 yet being able to measure separately the
13 examining core or other individual groups of
14 substantial size because it seems to me it's
15 just a matter of coding and getting a lot
16 more information without any additional
17 costs.

18 MARY LEE: It had nothing to do
19 with the cost. It had nothing -- it had to
20 do with the quality counsel was the group
21 that got together and talked about this, and

1 the quality counsel has representatives from
2 every business unit and the three unions.

3 And it's a USPTO survey so we had to take
4 into consideration all employees across the
5 USPTO when we were making these decisions.

6 And the way we were rolling out the
7 employee survey this year was a bottoms up
8 approach. We wanted to get the information
9 to the lowest level supervisor to talk to
10 their employees about the data before it was
11 reported up to their supervisors and finally
12 up the chain to the executive committee
13 level. And the decision was made when we
14 looked at the USPTO as a whole that in order
15 for people to answer questions like my
16 supervisor trusts me, I trust my supervisor,
17 we had to make sure that we couldn't
18 demographically identify people. And it was
19 a difficult task, if you will, trying to make
20 the demographics in such a way that they were
21 useful, but also in such a way that everybody

1 felt confident and that people would actually
2 answer the survey.

3 SUSAN LEE: Being a former examiner
4 a long, long time ago, I'm going to assume
5 that there are issues that are very unique to
6 the examining core and concerns that perhaps
7 in order to have a more accurate survey of
8 customers that are employee satisfaction,
9 then perhaps you might want to have this in
10 the future since it doesn't appear to be that
11 difficult, which we're indicating, Miles, and
12 maybe Howard might want to elaborate on it
13 whether or not there's been any interest in
14 the examining core as far as having a
15 separate survey.

16 HOWARD FRIEDMAN: I agree that I
17 think it should be separate for a few
18 reasons. One, both units are large enough
19 now so I don't think there really has to be
20 any privacy concerns. Two, the data is
21 obviously going to be more accurate because

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1 it's broken into two substantial categories,
2 and three, the data would be broken out more.
3 Obviously you could zero in more on what you
4 need to do to change things, certain things
5 are isolated as far as if there are any
6 particular problems. So I know our
7 organization would be in favor of the data
8 being accumulated separately from the 243
9 group in the future.

10 MILES ALEXANDER: Thank you.

11 MARY LEE: Sharon Marsh is in our
12 audience and she's on the quality counsel so
13 I'll make sure we take this feedback back to
14 the quality counsel.

15 SHARON MARSH: We did break the
16 survey out by grade level so the managers in
17 the law offices got two sets of data, one was
18 GS-11 and above which were only the
19 attorneys, and the other was below GS-11 so
20 we have that to some extent even on this
21 survey.

1 MILES ALEXANDER: Have you read
2 those figures separately in the satisfaction
3 area?

4 MARY LEE: Yes; we can and we have
5 for the union, but we haven't published them
6 yet because again it's a bottoms up approach.
7 And aside from this very high level data that
8 we're printing out to everybody, the rest of
9 the data is coming up from the bottoms up.

10 MILES ALEXANDER: Thank you.

11 GRIFFITH PRICE: Do you have any
12 members of the examining core who are not
13 GS-11 and above?

14 MARY LEE: Should not have. You
15 may have some tech support that are GS-11.

16 GRIFFITH PRICE: So it's not
17 clear-cut?

18 MARY LEE: In some of the areas you
19 don't --

20 SHARON MARSH: It was broken out by
21 the north tower law offices and the south

40

1 tower law offices. In a law office you will
2 not have any GS-11s that are not attorneys.

3 HOWARD FRIEDMAN: But I think even
4 when you break out the data that way it
5 includes the managers too, does it not?

6 SHARON MARSH: Yeah.

7 HOWARD FRIEDMAN: So for every law
8 office when you're surveying 23 or 25
9 attorneys, you're also including one manager
10 in terms of one senior attorney which doesn't
11 seem like a lot, but it's 30 more people who
12 conceivably because they're managers as
13 opposed to being in the bargaining unit could
14 affect to some degree the results which is
15 why it's even more accurate if you separate
16 not only by grade level but by bargaining
17 unit.

18 SHARON MARSH: Howard, Mr. Anderson
19 was just reminding me, I believe the survey
20 was broken out by exact grade so we could
21 weed out the GS-15s which would be the

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1 management staff.

2 HOWARD FRIEDMAN: Obviously we
3 wouldn't -- you know, in the past the senior
4 attorneys were still 14s. Now we can because
5 the senior attorneys are 15s.

6 MILES ALEXANDER: Anybody else?

7 MARY LEE: I just want to say that
8 we recognized all these when we were putting
9 the survey together and doing the
10 demographics part and we struggled over all
11 these issues. Hopefully we would make
12 improvements in the next year's survey. If
13 you look at the key strengths from the
14 employee survey, you can see that in the
15 first bullet there the employees are
16 extremely satisfied with some of the new
17 initiatives that are some on board in this
18 last year. Adding flexibilities to the
19 workplace, adding flexibilities to the times
20 people can come to work, the range of hours
21 and those kinds of things so that was

1 extremely positive. Most of the questions
2 around those type of issues were over 75
3 percent satisfied.

4 We have a number of questions about
5 your immediate supervisor, hence, a lot of
6 discussion we've just been having and does my
7 supervisor trust me, is my supervisor
8 confident, those kinds of things. And again,
9 extremely high ratings. Most 75 percent or
10 above in the trademark organization. Pride
11 in work and pride in the job I do and
12 enjoying their work. Again, very high
13 satisfaction rating around that. Most of
14 those questions were well above the 60 to 75
15 percent range.

16 Recognizing who their customers are
17 and having a customer focus. Again, over 70
18 percent in all those questions. And the way
19 we treat each other in the organization,
20 respect that's shown in the organization,
21 again, over 70 percent in those types of

1 questions. So very good area, key strengths
2 in those areas.

3 Opportunities for improvement, we
4 always have them. The first came out in pay
5 and we were told by the contractor that
6 conducted the survey, this is totally not
7 unusual whether you're federal government or
8 any other kind of organization, pay always
9 ranks very low, but in this case pay was
10 unfavorable. Do you like your pay? It was
11 unfavorable. How about compared to the rest
12 of the federal government? It was
13 unfavorable and the rest of the private
14 industry it was unfavorable. So pay was
15 unfavorable no matter how we looked at it.

16 Workload levels, again, there were
17 some concerns there. Trust and respect
18 between management and that was above your
19 immediate supervisor, the upper management
20 level, we had some concerns there. PTO
21 striving for excellence in conducting cost

1 effective and efficient business operations,
2 concerns there. Risk taking, there was a
3 question on the survey that says risk taking
4 is something that's encouraged here at the
5 USPTO and that came out very low. And there
6 were some differences between when you looked
7 at supervisors versus nonsupervisors and we
8 do have that demographic break-out.
9 Supervisors ranked the trademark organization
10 higher than nonsupervisors.

11 The process that we have in place
12 for getting this information out to all
13 employees and building action plans is
14 ongoing now and we hope to take a lot of
15 actions to improve this overall data. And
16 this final slide is the accomplishments that
17 trademarks has made over the last year and
18 what they intend to do with all this data so
19 this is Anne's data so I'd like to turn it
20 over to her to talk about these
21 accomplishments and answer any questions.

1 LAWRENCE ORESKY: Do you see any
2 correlation between the timing of this
3 employee satisfaction survey and whether or
4 not the issues with the pay for performance
5 was resolved or unresolved at the time of the
6 survey, any correlation there?

7 MARY LEE: Again, we had a lot of
8 discussion. The employee survey was planned
9 and there was a lot of things happening
10 around the USPTO at the time and we went
11 forward and did this survey anyway. I don't
12 know if we'll ever know if what was happening
13 made a difference in the survey results. I
14 think the fact that it was an overall drastic
15 improvement says maybe not, but --

16 LAWRENCE ORESKY: Did the survey
17 come before the issues revolving around pay
18 for trademark attorneys, was that --

19 MARY LEE: There was two issues at
20 the time. We conducted the survey in
21 October, September -- September, October time

1 frame. That was the time frame when the
2 patent organization had proposed a pay raise
3 that had been turned down by the patent
4 organization which you say, what does that
5 have to do with trademarks? Well, that whole
6 thing impacted the whole organization.
7 Whether you were or were not involved in a
8 potential pay raise, I think all employees
9 were impacted by those decisions.

10 The agreement that Anne talked
11 about that just happened a few weeks ago with
12 the trademark 245 organization was in the
13 talking phases, but there was no results yet.
14 That didn't happen till a few weeks ago. So
15 there were a lot of things going on in the
16 organization at that time.

17 HOWARD FRIEDMAN: I would suggest
18 humbly based on anecdotal evidence from the
19 bargaining unit on the positive side that I
20 think the primary reason the overall
21 satisfaction in trademarks went up were

1 because of the initiatives introduced
2 primarily by former Director Dickinson
3 whether it was midday flags, the number one
4 item under key strength, range of work hours
5 would seem to be pretty clear to us, at least
6 our executive order.

7 Because of the initiatives
8 introduced during that fiscal year, we think
9 that was the key reason why overall
10 satisfaction levels went up. And obviously
11 that's something I'm more familiar with than
12 the rest of the committee. We thought that
13 was very much the key driver in increasing
14 employee satisfaction, at least in our light.

15 JOHN ROSE: I guess that raises the
16 other question. You talked before about the
17 bottom up process. I'm just curious how it
18 relates to the key opportunities that you see
19 as being listed here on the chart.

20 MARY LEE: Each individual
21 organization at a lower level gets their

1 results and their results may reflect
2 somewhat similar to this, but there may be
3 some specific instances in a specific
4 organization that are different. And the
5 supervisors are sitting down with their
6 employees and really talking about the
7 results of the survey. Is it because of the
8 initiatives that you're happy or is there
9 something that's making you unhappy and we
10 need to really understand these results as
11 they apply to us in our business unit. And
12 we've identified some overall opportunities
13 for improvement for the trademark
14 organization or the USPTO as a whole, but
15 there may be a lot of other action plans,
16 very individualized, very specific business
17 areas that were taking place over the next
18 year.

19 JOHN ROSE: I just want to make
20 sure because I thought we had some feedback
21 here that perhaps had to be shared earlier.

1 Is the focus of the bottom up process to not
2 only surface issues and identify action
3 plans, but then to share those action plans
4 in each business union across the
5 organization?

6 MARY LEE: Right; there will be
7 sharing, but there may be something that
8 happens in law office A that doesn't need to
9 happen in law office B. Because there's
10 differences, they'll share them. And if it
11 makes sense to do it, they'll both do it, but
12 they may not have to. So we are trying to
13 make this very specific to each small
14 business unit.

15 HOWARD FRIEDMAN: They're sort of
16 combined by key strengths with key
17 opportunities. In fact, somebody has this on
18 their screen saver if we combine the
19 initiatives that I talked about which are
20 greater flexibility with an issue under key
21 opportunities which you are always going to

1 have when you have a production system which
2 is the workload, somebody's screen saver
3 says, "We're now getting greater flexibility
4 to work harder." And those are really I
5 think pretty important points. Obviously we
6 have a production system, we need to produce,
7 we need to be meet performance agreements and
8 those initiatives help, but those are two
9 kind of issues that to some degree still need
10 a lot of work.

11 MARY LEE: I will say in response
12 to the positive results coming strictly from
13 the initiatives that had happened, I think
14 some of the supervisor results how respected
15 and trusted and competent people think their
16 supervisors are is a very positive thing in
17 the trademark organization and had nothing to
18 do with any initiatives that were taking
19 place. I think it says a lot for small teams
20 working closely together. There's a lot of
21 cooperation issues that got very, very high

1 grades. So that's a positive.

2 MILES ALEXANDER: Thank you. Any
3 questions from anyone else? We appreciate
4 the presentation. Anne?

5 ANNE CHASSER: Well, the list, you
6 all have copies of the list of
7 accomplishments for 2000 which most of them
8 were highlighted in the report to Congress so
9 I won't go over all of them. The one point
10 that I forget to mention in my presentation
11 was our -- and this directly relates to
12 employee satisfaction -- is our work at home
13 program.

14 We are up to -- our plan is to have
15 up to 110 examining attorneys working from
16 home by the end of this fiscal year.
17 Currently we have 62, I believe. More than
18 60 working at home. We also have expanded
19 that to our tech support where we're
20 undergoing pilot program with our paralegals
21 in the post-registration area and that has

1 been a very positive program.

2 We're happy to report that initial
3 indications in terms of productivity, that
4 the numbers of those working at home seems to
5 be very favorable and in the right direction
6 largely because more time is spent on
7 examining hours rather than on other
8 activities within the office so we're very
9 pleased with that program as well.

10 Also in the area of communication,
11 I think that has always been a number one
12 concern among employees and staff and I think
13 we've had a number of major initiatives this
14 year in the area to improve communication
15 from our Director, Under Secretary, on-line
16 chat to our employee mailbox to internal
17 conference where we give presentations for
18 all areas within the office and that was very
19 successful. We also have had an all
20 employees meeting, a management office site
21 meeting as well.

1 In terms of employee recognition,
2 we had an employee recognition picnic in
3 September and we recognized those individuals
4 that have been -- received bronze metal
5 awards from the Department of Commerce as
6 well as longevity awards. We have some
7 individuals that have worked for 35 years in
8 the trademark organization so we're very
9 pleased with that. Questions?

10 HOWARD FRIEDMAN: I wouldn't want
11 that presentation to go without saying that I
12 think Anne and Bob both deserve a lot of
13 credit for promoting and advocating the
14 trademark work at home program. It's worked
15 out wonderfully. Obviously we're
16 appreciative of it not only out there, but it
17 continues to be rolled out to other people
18 and we look forward to it being rolled out to
19 additional people. It's really worked out
20 for everybody and for that we're thankful.

21 LAWRENCE ORESKY: I'm assuming that

1 this is not a five day a week program, but
2 what generally do people, if they work at
3 home, how many days a week?

4 ANNE CHASSER: Well, currently our
5 program is set up -- our pilot program is set
6 up so our examining attorneys would come to
7 the office two days a week and work at home
8 three days a week. Our plan is that
9 eventually our employees will only come in
10 one day a week to the office. I mean,
11 conceivably once we have total electronic
12 filing management, but right now they're
13 usually coming to the office (inaudible) --
14 other than training and information sharing.

15 MILES ALEXANDER: Are many of those
16 part-time home employees?

17 ANNE CHASSER: Actually, one of the
18 requirements to work at home is that you work
19 full-time. So we had a lot of part-time
20 employees that chose to go full-time for the
21 opportunity to work at home so that has been

1 an added benefit.

2 MILES ALEXANDER: Thank you. Any
3 other questions? Next item on our agenda is
4 presentation by General Counsel, James Toupin
5 and Deputy General Counsel Bernard Knight.

6 JAMES TOUPIN: I'm Jim Toupin. I'm
7 with General Counsel PTO. I'll just say a
8 couple words as Mary Lee did about how our
9 organization is developing before Bernie gets
10 up and addresses the subject. I've been here
11 about a month and a half. I'm the head of an
12 organization that includes the Solicitors
13 Office, the Office of General Law for which
14 Bernie is the Deputy General Counsel, the
15 TTAB, Board of Patent Appeals and the Office
16 of Discipline. It's been an interesting
17 process for me to come on board. I was for
18 the last 14 years Deputy General Counsel at
19 the International Trade Commission. Before
20 that however, I was a -- large parts of my
21 career in private practice, a trademark

1 practitioner, and it's been interesting to
2 come on board as David Sams' supervisor since
3 the first brief I filed was a motion for
4 summary judgment to the TTAB and the first
5 settlement agreement I dealt with issued in a
6 concurrent use application.

7 And I will say that as we've been
8 growing our organization, particularly
9 Bernie's part, we've been hit hard by the
10 freeze which left us with about
11 three-quarters of our skeleton crew on board,
12 and Bernie has been working terrifically hard
13 to get us really up to speed. He will be
14 providing among others of his role, legal
15 support to this unit and his presentation now
16 will be part of that.

17 MILES ALEXANDER: Thank you.

18 BERNARD KNIGHT: Good afternoon
19 everyone. In preparing for the T-PAC meeting
20 today, Anne had asked me to address two
21 items. One was to go ahead and propose to

1 the members of the T-PAC a proposed time line
2 for presenting to the T-PAC proposed rule
3 packages, regulations and notices that we're
4 going to be filing with the Federal Register.
5 The concern here is to make certain that
6 we're giving to the T-PAC our proposed rules
7 and regulations in a timely fashion so that
8 the committee members have enough time to
9 make comments and get back to us on our
10 proposed rules.

11 And then secondly I wanted to
12 discuss with you this afternoon our procedure
13 for nominating three new T-PAC members
14 because three terms will be expiring this
15 July 12th and we need to have our new members
16 in place by July 13th. First turning to our
17 regulations and rules. We developed a time
18 line based upon whether or not we are
19 required to consult with the T-PAC before we
20 publish proposed rules and regulations in the
21 Federal Register. There are two types of

1 rules and regulations for which the USPTO is
2 required to consult with the Public Advisory
3 Committee.

4 The first type is where we propose
5 a change in a trademark or a patent user fee,
6 and the second type is where we are going to
7 propose a rule or regulation for which the
8 Administrative Procedures Act requires that
9 there be an opportunity for notice and public
10 comment. Generally speaking, the
11 Administrative Procedures Act will require an
12 opportunity for public comment where the rule
13 is going to affect the legal responsibilities
14 or obligations of a party. Consequently,
15 notice the comment is not required. We are
16 not required to consult with the advisory
17 committees when we issue interpretive or
18 procedural rules or notices.

19 Now, in the instances where
20 consultation is required with the advisory
21 committee before we publish in the Federal

1 Register, we have developed a 10-day business
2 day time line. So as a general rule, we're
3 going to give the proposed regulation notice
4 of rule to the Public Advisory Committee 10
5 business days before it leaves our office.
6 And when we're dealing with proposed rules or
7 regulations, we really have to break them
8 down into proposed rules or regulations which
9 are significant and those which are not
10 significant.

11 And for our purposes whether or not
12 a notice or a regulation is significant is
13 going to be determined first by our office.
14 If we don't label it significant, then the
15 Office of Management and Budget or the
16 Department of Commerce can still label a rule
17 or regulation significant. A significant
18 item is one that is of a great policy concern
19 or is likely to be very controversial. And
20 in that case the Office of Management and
21 Budget has 90 days to look at the rule or

1 regulation and make any changes to it before
2 it's published in the Federal Register.

3 So if a rule is significant, we're
4 going to give it to the advisory committee 10
5 business days before we are going to give it
6 to the Office of Management and Budget. If a
7 rule is not significant, we're going to give
8 it to the advisory committee 10 business days
9 before we give it to the Federal Register for
10 publication.

11 Examples just to bring these things
12 into some concrete light. A significant rule
13 or notice that we published last year was our
14 notice on the study of alternative fee
15 structures, and a nonsignificant rule would
16 be our notice that we're going to be
17 publishing in order to get applications for
18 the nominations of new T-PAC so that would be
19 the difference.

20 In addition, Anne Chasser, the
21 Commissioner for Trademarks has often decided

1 to give many other rules, regulations and
2 notices to the T-PAC. And when the
3 commissioner decides to give items to the
4 T-PAC that are not by law required to be
5 given to the committee, then we are going to
6 as a matter of course give them to the
7 committee when we give them to the Office of
8 Management and Budget or we send them out to
9 the Federal Register.

10 In addition, we know that sometimes
11 it would be helpful if the advisory committee
12 got a heads up that we are going to be
13 preparing a rules package or issuing a
14 notice. And in those cases we are going to
15 make every attempt to advise Anne of that so
16 that she can advise the advisory committee
17 that we have something coming up. And if you
18 have subcommittees that are going to be
19 reviewing those rules and regulations, you
20 can do that with some advance notice. In
21 addition, we are required to come every six

1 months to publish in the Federal Register
2 what is known as the unified agenda, and the
3 unified agenda lists all of our upcoming
4 rules and regulations projects and also has a
5 time line for when those are going to be
6 completed.

7 Finally with respect to rules and
8 regulations, all of this is on hold right
9 now. Similar to the hiring freeze that Anne
10 spoke about, there's also a freeze on new
11 rules or regulations. Rules or regulations
12 according to the memorandum which was
13 prepared by the President's Chief of Staff
14 must be approved by a department or agency
15 head before they can be published in the
16 Federal Register. And because the PTO does
17 not have an Under Secretary in place, as a
18 general rule, our regulations and notices are
19 not moving forward. Now I'd like to turn to
20 our procedure for nominating new T-PAC
21 members.

1 MILES ALEXANDER: Before you do
2 that, if a regulation was proposed and you
3 did have a Commissioner in place and
4 approved, does it get held up with the
5 changes in administration automatically or
6 does that approval require that that prior
7 Commissioner and Under Secretary and
8 Secretary of Commerce suffice?

9 BERNARD KNIGHT: Mr. Alexander, all
10 final rules would also be held up. So before
11 we could go finalizing a proposed rule, it
12 would have to be approved by the Department
13 of Commerce under this procedure and they're
14 just not approving any right now. There's
15 two exceptions. One is if there is a
16 statutory requirement that something be done
17 which would happen in the case of nominating
18 new T-PAC members, they have to be in place
19 by July 13th. And the second exception is
20 where we'll affect the health and safety of
21 the citizens and that's a hard hurdle for us

1 to do.

2 So turning to the nominations of
3 new T-PAC members, the three members whose
4 terms are expiring this July 12th are Susan
5 Lee, David Moyer and Griffith Price. And
6 turning to the next overhead, this is our
7 time line for nominating and selecting our
8 new T-PAC members. As you can see, we're
9 going to have the request for nominations
10 published in the Federal Register hopefully
11 by the end of March. The nominations will be
12 due by the end of April.

13 We have prepared our Federal
14 Register notice. It's now sitting with the
15 Department of Commerce. It's not been signed
16 yet by the Acting Under Secretary, Nick
17 Godici, but I have spoken with the people at
18 the Department of Commerce and that Federal
19 Register notice will go forward so that we
20 can get the new members in place. Does
21 anyone have any questions on any of these

1 matters? Okay. Thank you very much.

2 MILES ALEXANDER: Thank you. Next
3 item on the agenda is Deputy Commissioner,
4 Bob Anderson's presentation on electronic
5 filing update and how the T-PAC can support
6 the process.

7 ROBERT ANDERSON: There are several
8 specific things I was asked to address. One
9 is the cost of electronic filing. As was
10 mentioned this morning, we believe that we
11 had 80 percent plus applications filed
12 electronically. We would have a cost
13 avoidance of about \$10 million. This was
14 calculated based on the amount of money
15 that's spent processing paper applications,
16 the time that is sometimes spent trying to
17 track down materials that get lost and so
18 forth.

19 Currently in fiscal year 2001 the
20 cost for electronic filing including and
21 under web services is \$1,035,000. That

1 includes all of our web services, the TEAS
2 application, TARR and TESS, both of which
3 I'll be talking about a little bit later. So
4 the total cost of electronic application
5 including on the web services is about a
6 million dollars this year. That's
7 maintenance, keeping everything up on the
8 web, any enhancements to TEAS and other web
9 applications.

10 Plans for the roll-out, February
11 16th we had a presentation in Chicago in
12 conjunction with three law schools. Several
13 law firms in Chicago were primary sponsors.
14 We went over, spoke to approximately 250
15 people split between corporations and law
16 firms. We did a short presentation on the
17 office, short discussion that I'll give here
18 in a few minutes, and then we had a fairly
19 extensive demonstration of the TEAS
20 application itself by Craig Morris and then
21 broke up into two sections, one law firm and

1 the other corporate to discuss specific
2 problems that they might have implementing
3 electronic filing in their areas.

4 I handled the corporate discussion,
5 Craig Morris handled the law firm discussion.
6 A lot of the focus was how to incorporate
7 electronic filing into file systems that are
8 in use in the law firms or corporation, and
9 another central point was on signing
10 electronic applications. A little bit of it
11 was focused on a recent change in our rules
12 that allows attorneys to sign applications.
13 And apparently some law firms are
14 experiencing a situation which corporate
15 filers say, well, you just go ahead and sign
16 the application. And attorneys are reluctant
17 to do that for various reasons related to
18 what might happen if a controversy arises
19 about the application or registration.

20 The other question simply goes to
21 the protocol we use is a backslash and then a

1 series of numbers or characters and another
2 backslash constitutes a signature, and I
3 think that was taken care of by giving the
4 explanation of how we arrived at that. But
5 in any case, it was carefully reviewed in the
6 agency before we adopted it. It is
7 consistent with federal law and now with
8 federal statute. Congress recently adopted a
9 statute on electronic signature and the
10 protocol we're using with TEAS was one of the
11 protocols that is specifically authorized by
12 statute now.

13 The strategy for putting this out
14 further, based on the presentation in
15 Chicago, Anne Chasser is currently working
16 with people in other cities and we plan on
17 having something of a road tour to sell the
18 TEAS process to other corporate filers and
19 law firms around the country. Tentatively
20 we're looking at Boston, New York, Atlanta
21 and Houston. I'm not aware of any others

1 that are on the table right now, but Anne may
2 know a little more about that. Now, we have
3 not gotten any specifically set up, but we
4 are more than willing to go out and do these
5 things.

6 The other thing that's going on is
7 Craig Morris or someone who works for him is
8 willing to go to a law firm or a corporate
9 environment and do a specific demo for him
10 and also work with him on setting up their
11 process. We are currently working with a law
12 firm in Chicago who has offices in Washington
13 to have Craig and probably EFS, the patent
14 electronic filing system demoed at the law
15 firm at the same time. When we get this set
16 up, if it's successful, we may put that out
17 as a proposal too that rather than just doing
18 TEAS or EFS separately, do both PTO
19 electronic applications at once in an
20 environment to give people an opportunity to
21 learn how to use these things.

1 That's pretty much our strategy for
2 getting TEAS out and getting brighter use of
3 it at this point in time. It's a PR campaign
4 with an on the road tour combined with it.
5 We'll see how successful it is. I will say
6 based on the experience in Chicago, there is
7 an increasing interest in using electronic
8 filing. And one of the things that came
9 across fairly clear in the corporate part of
10 the program was many corporations want to
11 adopt electronic filing as part of their
12 corporate structure. And this is apparently
13 starting to create some pressure in law firms
14 to get interested in electronic filing
15 because a few corporations are now telling
16 law firm partners, I want to file
17 electronically and you have no option but to
18 adopt it which is fairly good news for us
19 because that would mean that there will be an
20 increase in TEAS filings that will come
21 naturally.

1 As Anne mentioned earlier, when the
2 TEAS application first came on, approximately
3 eight percent of the applications listed an
4 attorney in the correspondent field.

5 Currently we're up to about 35 to 40 percent
6 of the applications list an attorney as
7 correspondent so there's been a fairly
8 significant increase. I recently had a list
9 run of attorneys appearing in the corporate
10 -- or in the correspondence field. It's now
11 some 300 different attorneys with a few
12 attorneys that file several hundred
13 applications electronically, or a few
14 attorneys are listed as correspondent to the
15 level of several hundred.

16 Corporate filers, we have one
17 that's approaching 1,000 applications now.
18 We have several that are in the 300 and 400
19 range so it's being picked up fairly quickly
20 by some corporate filers. We had some
21 indication again in Chicago that corporate

1 filers that have not used it extensively are
2 getting internal pressure in the company to
3 adopt electronic filing because the whole
4 company is moving to an E-Commerce activity.
5 Therefore, filing electronically will be part
6 of the way they operate.

7 With that I'd like to run through
8 the slide show that I gave in Chicago. Now,
9 the goal of my part of it was to give the
10 attorneys and corporations at the program a
11 general idea of where we were going with
12 E-government and the trademark operation of
13 the USPTO. I covered five major areas, pre-
14 examination, examination and post-examination
15 which affect operations. Then our customers
16 and USPTO.GOV which is our web address, and
17 finally where we're moving with file
18 management in the agency. Next slide.

19 In the pre-exam area, since April
20 1999 all paper applications filed in the
21 office have been scanned as electronic images

1 so the paper appears in TICTRS just as you see
2 here. This is a drawing from an application
3 that was filed on paper. You can go into
4 TICTRS, put in the serial number and get the
5 application as filed for all applications
6 filed after April 1999.

7 MILES ALEXANDER: Can you get the
8 file wrapper history as well?

9 ROBERT ANDERSON: No; that is not
10 available in TICTRS yet. You would get that
11 through TARR or TRAM. Electronic
12 applications as filed are also available in
13 TICTRS and the image looks like a piece of
14 paper. Later in 2001, probably late this
15 summer we're going to start running a pilot
16 to scan all incoming and outgoing
17 correspondence which means if an examiner
18 sends out an office action, it will be
19 available in TICTRS with a reference to the
20 basic file that's attached to, and then
21 incoming correspondence will be scanned into

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1 the system and indexed to be filed with the
2 application. So we'll start creating a full
3 electronic file wrapper for all applications.
4 Next slide.

5 Again, in pre-exam, TEAS we
6 primarily consider to be a pre-exam
7 application. As I said, all TEAS
8 applications, this is the trademark
9 electronic application system are available
10 in TIGRS. TEAS will be converted to XML
11 tagging in April 2002. When I mentioned this
12 in Chicago, somebody took that to mean that
13 TEAS is not ready for prime time. All that
14 means is we're changing the tagging structure
15 for the data in TEAS to be more compliant
16 with industry standard. EFS, the patent
17 application uses XML already. Currently TEAS
18 is based on HTML which is different tagging
19 structure that came into play before XML.

20 One question about TEAS, should we
21 go mandatory? It's been discussed somewhat.

1 What we do know if we propose mandatory
2 electronic filing, we cannot require
3 mandatory electronic filing of any foreign
4 filer. For one, under TLT, if you are a
5 signatory to the treatise, TLT specifically
6 excludes electronic filing as a requirement
7 for getting a filing date so we could not
8 require it of a TLT applicant.

9 Under WTO standards, we could then
10 not require it of any party who is a non-U.S.
11 resident filing an application into this
12 country. So it would be an exclusion for
13 anyone filing from outside the United States
14 who was not a U.S. resident or who did not
15 claim U.S. citizenship. That would be about
16 15 percent of our filers. Could you go back
17 to that other slide a second. We also plan
18 if we propose this rule to put an exception
19 in for any party who does not have access to
20 the internet or the means to access the
21 internet. You would invoke that probably by

1 filing a declaration stating you did not have
2 access to the internet, we would therefore
3 accept a paper filing.

4 DAVID STIMSON: Just so I
5 understand, are you saying -- just the answer
6 to the question, like mandatory filing yes or
7 no, what is the answer to that?

8 ROBERT ANDERSON: We don't have an
9 answer to that yet, and actually I was going
10 to get that in the end. Our preference is to
11 have electronic filing be adopted by our
12 users without having to make it mandatory,
13 and that's why we're going to take this out.
14 And I mean, we're literally offering law
15 firms in Corporate America an opportunity to
16 work with us to make this application work
17 for them. And if we don't have to go to
18 mandatory electronic filing, we won't go to
19 mandatory electronic filing. We would like
20 to get to a high level of electronic filing
21 as quickly as possible, and to do that it

1 might require that we put a mandatory
2 electronic filing rule in. There are other
3 options such as requiring a processing fee
4 for paper applications.

5 As I indicated previously, it is
6 cheaper for us to process an electronic
7 application. To process paper, there's some
8 eight steps before the application goes to
9 the law office. To process a TEAS
10 application, processing the fee, the incoming
11 data is all done electronically. We do have
12 to do a little bit of massaging on it. We
13 add design search codes, mark drawing codes
14 and so forth to the application, but
15 otherwise everything is done electronically.

16 We are still printing everything
17 off and putting it into file wrappers and
18 that's where the paper application and the
19 TEAS process match each other is putting
20 everything in a file wrapper with a file
21 label on it, but there is an extra cost

1 processing paper. So there has been some
2 discussion about putting into place a higher
3 fee for processing paper, although we don't
4 think that would be as effective as mandatory
5 electronic filing.

6 DAVID STIMSON: Just to follow up,
7 so I understand correctly that you're going
8 to wait and see if the electronic filing
9 voluntarily gets to a certain level, you may
10 not do mandatory because you'll be happy with
11 --

12 ROBERT ANDERSON: If it picks up
13 very quickly, we probably would not propose a
14 rule for electronic filing, but the pickup is
15 pretty slow right now.

16 DAVID STIMSON: What would be the
17 date you would make that decision? By what
18 date would you want to see a higher level
19 before you went to management?

20 ROBERT ANDERSON: Well, off the top
21 of my head, it would go like this right now.

1 Not until we have a confirmed Under Secretary
2 who then will probably spend about 60 to 90
3 days getting their feet on the ground and
4 understanding exactly what's going on in the
5 agency, what types of policies he wants to
6 set. So we're probably well into calendar
7 year 2002 which would be, let's see, as of
8 today, approximately nine to ten months. In
9 other words, if we see a fairly significant
10 pickup in electronic filing over the next
11 several months, my guess is we will change
12 our view on going to mandatory electronic
13 filing.

14 DAVID STIMSON: One final question
15 while I still have the mike. If you go to
16 mandatory electronic filing, do you see any
17 sort of political problems under TLT by
18 saying it's going to be mandatory for U.S.
19 filers and not for non-U.S. filers?

20 ROBERT ANDERSON: I would put it
21 this way. I think when law firms start to

1 move to electronic filing, they will be
2 encouraging their foreign clients to file
3 electronically. The other thing I would like
4 to mention, we've had approximately 80,000
5 files filed electronically since TEAS came
6 into existence. Slightly over 50,000 of
7 those have been filed by U.S. parties. The
8 remaining 30,000 have been filed from outside
9 this country. That almost suggests that
10 there's a broader acceptance of electronic
11 filing with non-U.S. filers than there is
12 with U.S. filers. I mean, a very large
13 proportion of TEAS applications have been
14 filed by non-U.S. parties.

15 JOSEPH NICHOLSON: I was just going
16 to ask whether or not it would be the
17 long-term goal to get rid of the paper file
18 altogether assuming we could overcome the
19 hurdles of, you know, the form filings.

20 ROBERT ANDERSON: Well, we put a
21 long-term strategic plan on the table that

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1 says one day there will not be paper file
2 wrappers. Realistically I think paper file
3 wrappers will be around for quite a while
4 because they give people a fairly high level
5 of comfort. I don't know exactly when the
6 paper file wrapper will end as a way of
7 managing applications. I think it will
8 happen some day, I just don't know exactly
9 when. It certainly won't be in the next five
10 years in my opinion.

11 AUDIENCE MEMBER: Just a comment.

12 It's also a note that WIPO is planning a
13 diplomatic conference to revise the trademark
14 law treatise to put in an assembly for the
15 treatise, and certainly the issue of filing
16 on paper is an issue that will be addressed
17 at that diplomatic conference in the 2001,
18 2002 time frame. So that's another issue
19 that will affect how I think electronic
20 filing ultimately rolls out here in the U.S.

21 DAVID MOYER: When applicants file

1 electronically and then they continue to file
2 new applications, do they pretty much stay
3 electronic? In other words, once they do it
4 and get used to it. Do you have any data on
5 that?

6 ROBERT ANDERSON: I don't have any
7 real data on it. We have been taking a look
8 at that however. There is one corporation
9 that is filing exclusively electronically, or
10 appears to be filing exclusively
11 electronically now. They filed I believe
12 it's 854 applications the last time I looked.
13 There are few others that I think are
14 probably filing close to exclusively
15 electronically.

16 In Chicago actually that question
17 came up in the corporate area. And the way
18 it was stated was apparently some
19 corporations look -- they evaluate the risk
20 in the filing I believe was kind of the way
21 it was stated. And if it's an application

1 that they believe is pretty much a straight
2 shoot through the office, they'll file
3 electronically. Where they think that there
4 might be some real questions based on
5 probably use or something, they apparently
6 are filing on paper. I didn't quite
7 understand the distinction and they were not
8 extremely clear on it when they were
9 discussing it. But there are some people who
10 apparently are doing a mix of paper and
11 electronic filing as a decision inside their
12 general counsel's office.

13 CRAIG MORRIS: One of the decisions
14 for that is actually a practical one for
15 them. Obviously it's easiest to file an
16 intent to use application for a simple word
17 mark. It's a little more complicated
18 technically to file something where you have
19 to have an image file for either a design or
20 a specimen. So a lot of these filers are
21 kind of getting their feet wet doing just the

1 simplest application electronically. They're
 2 seeing how those are going. When they're
 3 comfortable with that, then they're switching
 4 over to do all their filings electronically.

5 MILES ALEXANDER: Thank you. Any
 6 other questions? What is the reason for the
 7 change in position, mandatory filing by the
 8 USPTO?

9 ROBERT ANDERSON: January 20, 2000.

10 MILES ALEXANDER: Is that a
 11 position or just a wait and see?

12 ROBERT ANDERSON: It forces the
 13 wait and see.

14 MILES ALEXANDER: Thank you.

15 ROBERT ANDERSON: Next slide
 16 please. Again, pre-exam. Major question
 17 with many people who want to file
 18 electronically has been processing fees.
 19 Currently if you file electronically, you
 20 must pay by credit card or deposit account.
 21 Many law firms and corporations don't like

1 deposit accounts because it ties up money
2 with no interest on it and they don't like to
3 use credit cards. Again, what I heard in
4 Chicago was there's always a question who
5 gets the airline miles, so on and so forth.

6 I've been talking to our finance
7 people in the organization. We have
8 implemented electronic funds transfer for
9 patent maintenance fees and hope to be able
10 to use it with trademark filings in mid to
11 late 2001. And the process is very similar
12 to that called E-check, should be available
13 in late -- or mid to late 2001. E-check if
14 you are not familiar with it, you give them
15 the check number and the bank code and it
16 basically goes out and draws against a
17 specific account. Electronic funds transfer
18 many of you probably use already for either
19 paying bills or investments or so forth, but
20 both of those should be available later this
21 year. At that point for electronic filing,

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1 you will have four options for paying fees.

2 Next slide.

3 One final thing in pre-exam many of
4 you probably experienced particularly
5 recently, you don't get something we're
6 supposed to have mailed to you. Filing
7 receipt, notice of allowance, notice of
8 publication, so on and so forth. I've
9 recently proposed that we go to a postcard
10 mailer to give you notice that the thing has
11 happened in the agency. Postcard mailer
12 would look something like this. It would
13 acknowledge receipt of the application, give
14 you your serial number, the filing date, the
15 mark, the international class that you filed
16 in and then tell you to go to USPTO.GOV to
17 get the specific information on the file.

18 Before we can mail this out, the
19 data is in our database and would be
20 available on USPTO.GOV through the TARR
21 system, the trademark application

1 registration retrieval system. The goal
2 here, increase the reliability of snail mail
3 mailings. Probably everyone in this room who
4 receives stuff from us has had problems
5 recently with not getting some type of bulk
6 mailing. We are investigating that in the
7 office, but the best solution appears to be,
8 print the thing off, put the address on the
9 front of the card and send it out.

10 My assumption is that the important
11 thing to you is to know that something you
12 were expecting has happened. That the notice
13 of allowance is issued, that we have gotten
14 your application and have recorded a filing
15 date. This would give that to you. We would
16 either buy the equipment in the office to
17 print the postcard mailer or farm it out to a
18 contractor, simply send them an electronic
19 tape and they would print the stuff out and
20 mail it.

21 Currently all of these batch jobs

1 go like this. There's a printer over in
2 Crystal Park Two, prints off literally
3 thousands of sheets of paper in the evening
4 and then hopefully they go to the south tower
5 the next day. And then they sometimes sit on
6 a shelf for a while or they go directly into
7 a folder stuffer and that puts them in an
8 envelope. And then they take the envelope
9 and run it through a franking machine and
10 finally they mail the stuff.

11 My guess is if it folded it back
12 and wrecked a few of these sheets, they
13 probably do what I do when my printer jams, I
14 just pull a sheet of paper out, wad it up and
15 throw it in the trash and forget about it.
16 So probably every once in a while a notice of
17 allowance or notice of proper filing receipt
18 gets pulled out of the folder stuffer because
19 it jammed and these things do jam because
20 small pieces of paper, paper powder jams
21 these things up after a while. This I think

1 would start to take care of that problem. If
2 you have any comments on this, I would like
3 to have them because we are working on this
4 right now.

5 Getting people to go to USPTO.GOV
6 is part of our overall E-government premise.
7 As we move more to E-government, there will
8 be a stronger and stronger reliance on the
9 internet as a source of information for our
10 customers. We want people to start thinking
11 about our internet site as being a primary
12 source of information from a customer
13 standpoint. Next slide.

14 Examination. Most of you may not
15 be aware, but Todd Dickinson did sign a rule
16 allowing electronic communication with
17 customers about two years ago. It has not
18 been strongly used in the agency yet. We are
19 currently -- or we have added fields in TRAM
20 to capture electronic addresses and we are
21 creating central e-mail boxes in all of our

1 internal offices. Every law office will have
2 a central e-mail box as will various parts of
3 trademark services and the commissioner's
4 office.

5 So if you communicate with us
6 electronically, the communication will go to
7 a central box. The reason we adopted this is
8 because if an employee is out or has left the
9 office, we don't want you sending a piece of
10 e-mail to him that then disappears into an
11 e-mail box never to come out again. With the
12 central box, the stuff will be cleared out of
13 the box and if the employee is there, given
14 to the employee electronically and then they
15 will work on it.

16 We do have to do some software
17 upgrades to implement this. It will be
18 coming into all of the offices in the near
19 future. And as I said, we now have the
20 capability in TRAM to capture e-mail
21 addresses from applicants. Once this gets

1 going, we will be actively soliciting from
2 you your e-mail address just in case you want
3 to communicate with us electronically. Under
4 the rule that was published, electronic
5 communication cannot be implemented by an
6 examiner. You must ask to communicate with
7 us electronically. But once you make that
8 request, you can then submit to the office
9 electronically. The examiner still has the
10 option of responding through regular mail if
11 they wish to do so. That's the way the rule
12 is structured right now.

13 The E-Commerce law offices, Anne
14 has mentioned those a couple of times. All
15 electronically filed applications go to these
16 offices. The important thing about them,
17 pre-exam, examination and post-exam
18 activities are all located in the pre-exam
19 law office so everything takes place at one
20 point. The goal here is to try to isolate
21 applications inside a single process

1 environment.

2 JOSEPH NICHOLSON: I'm a little
3 confused on something you just said with
4 respect to communications with examiners. My
5 understanding is that some examiners are
6 communicating with applicants by e-mail at
7 the request of the applicant. I guess I'm
8 not clear on whether or not they're actually
9 issuing office actions by e-mail.

10 ROBERT ANDERSON: They have
11 authority to issue office actions by e-mail.
12 It is not a requirement yet however. There's
13 some issues with 245, the union representing
14 our examiners that need to be discussed. I
15 think some examiners are probably issuing
16 office actions by e-mail, but I don't know
17 for sure. They can do that however.

18 JOSEPH NICHOLSON: Okay. Because
19 someone who works in a law firm, it's come up
20 in discussions internally and I guess the
21 concern is, you know, is this communication I

1 received from the examiner actually
2 triggering a six-month response requirement.

3 ROBERT ANDERSON: If it is an
4 office action, it triggers a six-month
5 response requirement. And we are developing
6 for E-TEAS an office action forum and a
7 response to office action forum. So it will
8 be incorporated into the E-TEAS system in the
9 future.

10 MILES ALEXANDER: Following up on
11 Joe's question, is it being scanned in if
12 it's being done by paper?

13 ROBERT ANDERSON: The internal
14 communication from the examiner will not be
15 scanned in, it will be captured the same way
16 we capture an E-TEAS document. It's created
17 electronically and it will simply be moved
18 over to the TIGRS system electronically.
19 Now, when you see it, it will look like a
20 piece of paper. If it comes in on paper, it
21 will be scanned into TIGRS, but it will not

1 be OCR. So if you respond on paper, the
2 examiner will still be working with paper
3 essentially when they look at the
4 application.

5 MILES ALEXANDER: But at what point
6 would that file wrapper history be completely
7 available postdate when the application's
8 first scanned in?

9 ROBERT ANDERSON: The file record
10 history is available through TARR now, the
11 trademark application and registration
12 retrieval system. It's available at
13 USPTO.GOV, it's also available in TRAM.

14 MILES ALEXANDER: Everything is in
15 fact electronically available that's in a
16 file from a certain date forward?

17 ROBERT ANDERSON: Well, no,
18 responses to office actions are not, nor are
19 examiner office actions available
20 electronically. That's in the future. But
21 the file wrapper history is available

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1 electronically.

2 MILES ALEXANDER: I thought the
3 file wrapper history included the office
4 actions?

5 ROBERT ANDERSON: We keep track of
6 everything that happens in the application
7 and that's what I thought you were referring
8 to.

9 JOSEPH NICHOLSON: It's essentially
10 a docket sheet. It's what's available
11 on-line.

12 ROBERT ANDERSON: Right; it just
13 says a first action was issued, an office
14 action was received, a response to office
15 action was received and so forth.

16 MILES ALEXANDER: All you get is
17 the document sheet, you don't get the office
18 action and the response to the office action?

19 ROBERT ANDERSON: Correct. Not at
20 this point; no.

21 MILES ALEXANDER: When do you

1 envision that being available?

2 ROBERT ANDERSON: If we get funding
3 and if everything works properly, I will get
4 into this in a little more detail in a
5 minute. 2004 --

6 MILES ALEXANDER: Thank you.

7 ROBERT ANDERSON: -- that complete
8 file wrappers will be available
9 electronically. Next slide.
10 Post-examination. This is the publication of
11 your application for opposition and the
12 issuance of a registration certificate. The
13 OG that issues next Tuesday will be published
14 using a process called TIPS. TIPS is a
15 postscript file that is sent to the
16 government printing office to print the OG.
17 The postscript file contains all text in all
18 images in the application. These two sheets
19 here are in fact a registration and the front
20 page of an Official Gazette that will be
21 published in the future.

1 We have been working on this
2 process for about a year and a half. We have
3 been producing PDF copies of our Official
4 Gazettes and all registration certificates
5 for about six months. We've been running
6 them parallel with the OG to see if the
7 process was working and to make sure that
8 everything was working right. Sometime later
9 this year if this thing doesn't fall apart
10 and if we have the resource available, we
11 plan on making PDF copies which you can read
12 with Adobe Acrobat available on the internet
13 at USPTO.GOV.

14 What that means is you could go to
15 the web site and see the current issue of the
16 Official Gazette and up to four back issues
17 on the internet. Now, Adobe Acrobat has a
18 very simple search engine which means if
19 you're looking for something specific, you
20 can use that search engine to go right to the
21 record. I mean, these are very -- because

1 we're using PDF, if the OG has 1,500 pages in
2 it, there will be 1,500 PDF pages up there,
3 but you can get to the page you want to get
4 to by putting in the serial number or the
5 mark. Now, the disadvantage of the PDF
6 search system or the acrobat search system
7 is, if you put it in the computer, every time
8 computer occurs anywhere it stops. It's not
9 a real sophisticated search engine, but it is
10 searchable.

11 MILES ALEXANDER: Does that mean if
12 somebody wanted to use this as a watching
13 service by determining whenever the following
14 four letters appear in mark, you can punch in
15 those four letters, let's say KODA, and you
16 could come up with anything with KODA in it
17 if it was published in that Gazette?

18 ROBERT ANDERSON: Yeah; but like I
19 said, this search -- the search environment
20 in Acrobat is not very sophisticated, but you
21 could use it for things like that. You can

1 also page through a PDF document just as you
2 page through a paper document. The PDM
3 version will be an exact duplicate of the
4 paper version published by GPO because the
5 postscript file is going to be used to
6 publish the Official Gazette.

7 Now, the other thing that's going
8 on is we print off a proof copy of the
9 Gazette before publication and we are now
10 reviewing that proof copy for classification
11 and other problems. And if the record should
12 not have been published or needs to be
13 changed, we will pull it before it prints.
14 So you shouldn't run into as many situations
15 as you did before when we publish a mark for
16 opposition and then we have to pull it out of
17 the Official Gazette because it was in the
18 wrong class or there was some other problem
19 that keep it from publication.

20 MILES ALEXANDER: Is this effective
21 now?

1 ROBERT ANDERSON: This is effective
2 now. For the March -- for the OG that
3 publishes on March 6th, we ran approved copy,
4 reviewed the approved copy, pulled out
5 records that should not have been in there
6 for various reasons and then we ran a final
7 copy, checked it and then sent the postscript
8 file over to the Government Printing Office
9 for printing the Official Gazette.

10 So the March 6th Official Gazette
11 will have been published using this
12 electronic technology. I wanted to talk a
13 little bit about what we make available to
14 customers at USPTO.GOV. TARR, the trademark
15 application and registration retrieval system
16 gives you bibliographically and status
17 information on all active applications and
18 registrations in the office and that does
19 give you prosecution file history. TESS the
20 trademark electronic search system is
21 essentially doing the search using the same

1 system that examining attorneys use.

2 The underlying search engine is
3 BRS. It's the same search engine that
4 examiners use, the interface is slightly
5 different. TEAS of course is the trademark
6 electronic application system. You can file
7 applications and pay your fees
8 electronically, but you can also file
9 applications for seven other forms, all of
10 the IPU stuff and all of the
11 post-registration stuff is now available
12 electronically and you can file it
13 electronically. That's Section 8, Section 9,
14 statement of use, request for an extension of
15 time to file a statement of use and so forth.

16 Goods and services. There seems to
17 be some misunderstanding about what's
18 available on the internet. We do have our
19 goods and services manual available on the
20 internet and we've been taking a look at
21 goods and services as part of the examination

1 process as part of our quality review
2 activity. We have found that 70 percent of
3 the applications filed will have a refusal
4 based on goods and services. If you would
5 like to avoid some of those refusals, go out
6 to USPTO.GOV, look up the goods and services
7 identification in that manual, put it in the
8 application and it should be automatically
9 accepted by the examiner.

10 And once there is evidence in the
11 file indicating that the ID itself is not
12 related to the application, and that will
13 only happen in a use application where you
14 have specimens indicating you're selling
15 tires for automobiles and you've identified
16 your services or your goods as batteries.
17 The examiner will definitely raise a question
18 about that.

19 But if you use the identification
20 manual, your ID should get through the
21 system. So if you want to avoid 70 percent

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1 of your refusals, take a look at USPTO.GOV.
2 Now we are currently in the process of
3 updating the electronic manual to make it
4 easier to use. You will be able to copy and
5 paste easier and get to what you want to get
6 out of that manual easier. It will be
7 updated at the same time inside the office.
8 We hope to implement this later this year,
9 but it will make the manual more usable.

10 JOSEPH NICHOLSON: With respect to
11 what other forms are on the TEAS system, do
12 they only work if you originally filed
13 electronically or can you just go in?

14 ROBERT ANDERSON: You can use it
15 anytime you want to. So if you filed on
16 paper and it was an ITU application, you got
17 your notice of allowance, now you want to
18 file a request for extension of time to file
19 an SOU, you can file it electronically.
20 There's no relationship between filing
21 initially electronically and then using TEAS.

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1 You can continue to file on paper and then if
2 you want to deal with the ITU activity
3 electronically, you can. Same with
4 post-registration stuff.

5 Other information, and I feel it's
6 important to mention this because we get a
7 lot of calls in the office asking questions.
8 We made an enormous amount of information
9 available on the internet at USPTO.GOV.
10 Decisions of the board are available in the
11 foyer reading room. Now, you do have to look
12 around a little to get there, but if you want
13 to find a board decision, it is out there.
14 The U.S. Goods and Services Manual, the
15 statute, the rules of practice, anything
16 you've ever wanted to know about filing an
17 electronic application. All rules published
18 by the agency are out there and they're also
19 available stored out there and you can go
20 look up stuff that was published quite a
21 while ago.

1 And there are also some very
2 valuable links to sites overseas just in case
3 you want to file an application in another
4 country and you're not sure about their
5 procedures, we do have links to almost all
6 other countries to get that information
7 fairly readily.

8 Final one. File management, TIS.
9 This is a typical file room in trademarks.
10 As Anne mentioned earlier, we have
11 approximately 700,000 classes in
12 applications. They're in about 540,000 file
13 wrappers that are currently in the south and
14 north tower building and they are all stored
15 in file rooms that look like this. That's
16 our file management system. It is run by a
17 group of employees who earn the lowest
18 salaries that the government can pay, and
19 their primary job is to move those blue and
20 pink files from one point in the north or
21 south tower buildings to another point and

1 hopefully do it with great accuracy and get
2 all of the papers you're filing into them.

3 Now, the other thing about this
4 file management system is we get
5 approximately 6,500 pieces of mail every work
6 day of the year, and so we try to match those
7 6,500 pieces of mail with all of those files.
8 TIS, the trademark information system will
9 move file management right to here. The
10 reason that we are creating this system is to
11 try to solve some of the problems you are
12 currently experiencing in the office with
13 lost papers, lost files, stuff that seems to
14 disappear and can't be found, so on and so
15 forth.

16 Now, I'm not going to guarantee you
17 that it's going to solve every problem that
18 trademarks has ever experienced or you've
19 ever experienced in the office, but we think
20 it will work better than the current system.
21 In particular, if applications keep

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1 increasing, regardless of whether it's at a
2 rate of 25 percent or 5 percent, given what
3 we're multiplying against at this point, this
4 system is going to get worse and worse. We
5 can't get enough employees in those buildings
6 to handle all of these files and all of these
7 papers and do it with anything approaching
8 100 percent accuracy. We have to move to
9 technology to enhance this process.

10 TIS is electronic file management.
11 Once it's implemented we will have primarily
12 the TICRS file moving through the examination
13 process electronically. When somebody works
14 on it, that work will be recorded
15 automatically. Now, it doesn't necessarily
16 mandate 100 percent electronic filing or
17 anything like that. But the closer we get to
18 100 percent electronic filing, the better
19 this system is going to work.

20 We are currently working with the
21 CIO area to do what's called a rapid

1 prototype in a small area of trademarks for
2 electronic file management. We hope to have
3 the rough outline in this prototype on the
4 table by mid-April and then begin work in one
5 area of trademarks, possibly one of the
6 E-Commerce law offices to prototype the
7 concept of electronic file management. We'll
8 be keeping you up-to-date on this as it moves
9 along. We think we have funding into 2002
10 and so we'll be moving forward on it.

11 Finally, there is a concept on
12 adopting technology that is used in academic
13 -- it's called be an early adopter. I would
14 urge all of you sitting at the table and your
15 friends to be early adopters of electronic
16 filing. The biggest reason is you will help
17 us design systems that work better for you.
18 If there's someone at this table who has used
19 TEAS when it first came out and is still
20 using it today, the current application does
21 not look anything like the first one almost

1 other than the form is kind of the same. We
2 have added a lot of enhancements to the
3 application. The bulk of them have been
4 added at the request of people who have used
5 the application. They run through Craig
6 Morris and Steve Meyers in the office.

7 We do record the staff, we pay
8 attention to it and then we put it in the
9 system on priorities. The things that look
10 like it will be the most help to the most
11 people go in first. Things that would be
12 nice, but maybe not that significant get a
13 lower priority. But we do urge you to be an
14 early adopter of this system, and it still is
15 in a pretty early stage because that gives
16 you an opportunity to help us make it work
17 better. And that's all I have. If there are
18 any other questions -- yes?

19 HELEN KORNIIEWICZ: My company has
20 been E-filing for quite a while now and we
21 have not had any problems with it, but you do

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1 hear a lot of concerns about the technical --
2 the hardware issues that are associated with
3 this. Have you experienced any problems of
4 that nature? And if so, how have you, you
5 know, adjusted for them?

6 ROBERT ANDERSON: We have had some
7 outages, but they've generally been
8 short-term. Usually just a few minutes to a
9 few hours. We've had a couple times where
10 the system has been down for two or three
11 days. There are two components to this
12 system. One is the TEAS server which takes
13 in the application, the other is the RAMS
14 server that processes the credit card. If
15 one or the other goes down, the system is
16 rendered ineffective. And I know how
17 frustrating it is to think you've got an
18 application almost done, you try to pay with
19 credit card and the RAM server is not
20 available.

21 We are working on redundancies for

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1 both parts of those systems which would make
2 it probably more available on a true 7/24
3 basis. In other words, once we have the
4 redundancy built into it, it should not go
5 down hardly ever. Ron Hack is here. I know
6 they're being worked on. I'm not quite sure
7 what the current status is.

8 AUDIENCE MEMBER: I think we're a
9 little further behind on RAM than we are --
10 (inaudible).

11 ROBERT ANDERSON: Yeah; you know,
12 we have funded redundancy for both systems.

13 HELEN KORNIIEWICZ: Okay.

14 ROBERT ANDERSON: Anything else?

15 MILES ALEXANDER: What happens if
16 somebody attempts to file an ITU or use an
17 application electronically and the system's
18 down, do they lose their priority date?

19 ROBERT ANDERSON: If they can't
20 attach to the office, yes, they would lose
21 their date. The date is effective upon

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1 receipt of the application in the office.

2 That's why we're building redundancy into it.

3 MILES ALEXANDER: When you say
4 redundancy, redundancy is the ability to make
5 it work when it's not down. You have an
6 alternative I take it?

7 ROBERT ANDERSON: Yes.

8 MILES ALEXANDER: Is there a backup
9 hard drive with all of this stuff someplace
10 that if the whole system --

11 ROBERT ANDERSON: Oh, yeah, every
12 application that has ever been filed
13 electronically has been stored
14 electronically. I mean, we can go back to
15 application one and pull it up and look at it
16 which is something that we cannot promise you
17 with paper application.

18 MILES ALEXANDER: Go back and look
19 at an alternative source or the hard drive of
20 the system which you've got?

21 ROBERT ANDERSON: They're not

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1 stored on the TEAS server. I mean, what
2 happens is we have a server that sits outside
3 the firewall that accepts the application and
4 processes the credit card and then it's
5 pulled inside the firewall and processed into
6 our systems and the applications are stored
7 inside the firewall server. But we have all
8 that stuff stored including the color and
9 everything else that we get.

10 MILES ALEXANDER: Any other
11 questions? Thank you very much.

12 ROBERT ANDERSON: Thank you.

13 MILES ALEXANDER: We will take a
14 10-minute break and then go into the final
15 session with Judge Sams.

16 (Brief break.)

17 MILES ALEXANDER: If Judge Sams
18 would go forward with his presentation, we'd
19 be very grateful.

20 DAVID SAMS: Thank you. Well, I
21 was asked by the committee today to address

1 three basic questions. The first one dealt
2 with our backlogs, and I would like to cite
3 the reductions we've made in our backlogs.
4 The second had to do with a follow-up to a
5 previous discussion we had about the idea of
6 when to judge decisions of the TTAB, and the
7 third was a general discussion of other ideas
8 to improve efficiencies at the board and I'd
9 like to take those in that order.

10 The TTAB's most important business
11 goals for 2001 are reducing the time it takes
12 to render final decisions and on the merits,
13 and to reduce the time it takes us to issue
14 decisions on motions for summary judgment. I
15 want to give a brief report on that. Have
16 the next slide. First on the goal for final
17 decisions on the merits. Our goal for this
18 year for 2001 is to decide cases on new
19 merits by the end of the fiscal year to be at
20 a point where we're deciding them within 20
21 weeks on average at the time they're ready

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1 for decision.

2 In fact, we're on track at this
3 point in the year. Our pendency now stands
4 at 20.7 weeks to decision on average. And
5 for finals as you can see from the next chart
6 it's -- on finals, the total number of finals
7 now pending since May 1999 has reduced from
8 400 in January of this year to 191 so we've
9 made some significant progress. And as I
10 said, the time decision now stands at 20.7
11 weeks.

12 Next chart. Our goal for deciding
13 summary judgment motions was set earlier
14 right before the start of this fiscal year at
15 32 weeks. We wanted to be at 32 weeks to
16 decision by the end of the fiscal year.
17 However, working with our new General Counsel
18 Jim Toupin and with Mary Frances Bruce who
19 works with me in managing the operation of
20 our TTAB, we decided we're making enough
21 progress in this area to revise the goal.

1 Which we haven't set a new goal precisely
2 yet, but based on the work that we've done
3 recently, we believe that we can virtually
4 eliminate the backlog of summary judgment
5 motions before the end of this fiscal year
6 and at that time be deciding motions for
7 summary judgment in a shorter time frame even
8 then when we're deciding finals which is I
9 think an important goal given the nature of
10 what we try to do in a motion for summary
11 judgment. That is, get rid of a case before
12 trial.

13 I should make one note here --
14 well, first let me say, give you a parallel
15 statistic here. Back in May of 1999 we had
16 227 pending motions for summary judgment, and
17 as of January we had 85. So we made
18 substantial reduction in the number of
19 summary judgment motions ready to be decided.
20 But both of those discussions about funds and
21 summary judgment, I need to add one

1 cautionary note, we think we're going to
2 reach those goals. In fact, we're pretty
3 certain that we will, but the challenge is
4 going to be to maintain this level of
5 productivity and this level of turnaround
6 time in light of the new receipts that we may
7 get. And that's not clear yet how many
8 that's going to be, but it also is a staffing
9 level problem that we're going to have to
10 cope with. So depending on those things
11 because these dates may slip and some of our
12 production models show that they might and we
13 in fact get a higher level of filings, but I
14 think we've made good progress and we're
15 going to try to maintain it.

16 Since we are short on time, I think
17 I'd like to go immediately to talk about the
18 second question which had to do -- and you
19 had some interest in it. It had to do with
20 one judge decisions and TTAB cases. At a
21 previous meeting, I believe, the first

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1 meeting of this committee, we discussed
2 whether it would be a good idea for the TTAB
3 to change its practice of using three judges
4 to decide cases and go to a one judge
5 decision.

6 After that meeting, we at the TTAB
7 decided to survey our judges to determine how
8 much time they were spending on cases in
9 which they were not the decision writer, and
10 we attempted to calculate the potential
11 effect on board and its pendency and
12 productivity if we change the three judge
13 decision-making process to a one judge
14 decision-making process.

15 Now, that survey -- and it was a
16 fairly simple one, but it was complete, every
17 judge responded. Revealed that in an 80-hour
18 bi-week, the average judge estimated that he
19 or she spent about 11.8 hours on duties
20 associated with being a panel member on a
21 case which that judge was not the decision

1 writer. That amounts to about 14.7 percent
2 of the judge's time.

3 I think a fair estimate of the TTAB
4 might as a maximum save 10 percent of judge
5 time by eliminating a three judge final
6 decisions in favor if a single judge panel.
7 And I make that comment based on the fact
8 that while the surveys showed it was 14.7
9 percent of the time spent on panel type
10 duties, I don't think we can expect to save
11 all of that time. There would still be
12 consultation obviously between judges and we
13 would -- my point of view is as the manager
14 of this organization, I would encourage that
15 kind of consultation to make sure we get the
16 best possible decision.

17 And also it's likely that if
18 deprived of the input of two other judges, a
19 judge might spend more time reviewing the
20 draft decision to make sure it's technically
21 correct. So proofreading, checking cites,

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1 that sort of thing that sometimes they rely
2 on others to help them with when there's a
3 three judge panel. So I think 10 percent
4 savings is about the most we can hope for.

5 Now, what does that mean? Assuming
6 there was a 10 percent production increase
7 among the judges on average as a result of
8 the elimination of three judge
9 decision-making, what would happen? Well, if
10 there were no TTAB additional hires above the
11 2001, FY 2001 authorized level, our current
12 production models would show that by the end
13 of fiscal year 2002, our pendency to final
14 decision would rise to 32 weeks with single
15 judge decisions as opposed to 38 weeks with
16 three judge decisions. So that's 32 versus
17 38.

18 There are several assumptions that
19 are going on there including the filing
20 levels which may or may not be correct in the
21 event once we see how many cases we get in

1 the door, but that sort of savings I guess
2 could be anticipated. Now, I can't leave
3 this topic though without at least saying
4 something along the lines that I said at the
5 first meeting, that I do have certain
6 concerns about going with a three judge
7 decision-making panel to a single judge
8 decision. Three judge panels have been I
9 think the TTAB's principal means of ensuring
10 consistency and predictability in our
11 decision-making.

12 When a judge holds a case
13 conference, the other two judges assigned to
14 the case do review it. And when they review
15 it, there are often interchanges which can
16 substantively change the decision and in any
17 event, make it stronger. And I believe that
18 we lose something by eliminating that input
19 of the other two panel members.

20 Also in the case where we have a
21 newer judge, I think having a panel in which

1 there are more seasoned judges very often
2 comes out with a better decision. So while
3 there are some gains to be made, I think
4 there's a balance between the gains to be
5 made, the needs of the operation as far as
6 pendency is concerned and the quality of
7 decision-making. That's something that we
8 certainly want to have the input of the
9 committee on, and I know it's something the
10 committee has been interested in discussing.

11 After the last meeting I had a
12 telephone conference meeting with two of your
13 T-PAC members, David Stimson and David Moyer,
14 talked in general terms about the board.
15 That was one of the issues we raised. We
16 didn't come to any conclusions about it, we
17 just kicked around the ideas. And as the
18 third part of the thing, I want to report on
19 in the brief time I have left are some of the
20 other ideas for increased deficiencies at the
21 board that we actually need the input of the

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1 committee on to find whether they think these
2 are good ideas or not.

3 One of those in particular that I
4 believe I mentioned at the last meeting, but
5 if not I'm going to mention at this one had
6 to do with that we are considering changing
7 our rules on extensions of time to impose in
8 oppositions where there's been suggested that
9 we change the practice so that there will be
10 two 60-day extensions of time. Eliminate
11 30-day periods for opposition. That is to
12 say, serial requests for 30 days. Two 60-day
13 request periods, the first without good cause
14 having to be established, and the second
15 where good cause would have to be established
16 -- or consent rather. And then to permit a
17 suspension upon stipulation of the parties
18 for up to a year from the date of publication
19 for the parties to work out settlement if
20 they can, after which there has to be an
21 opposition filed.

1 Now, this is just one proposal.
2 There are lots of permutations on it. The
3 advantage to the board of course would be
4 that we'd have fewer papers to process. And
5 as I think I pointed out to this group and
6 others before, we do spend an awful lot of
7 staff time, particularly our legal
8 assistants' staff time processing these
9 extension requests, and we've been getting
10 about 32,000 a year. Although this year it
11 is apparently slightly down based on
12 annualizing our current filings to date, it
13 looks like we're getting something in the
14 neighborhood of 25,000 this year which is a
15 little bit off, but it's still not halfway
16 through the year yet.

17 Anyway, this is a time consuming
18 administrative clerical task for us.
19 Changing the rule might be of great use to
20 us. We just want to make certain that if we
21 do propose something, that it is something

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1 that the bar and applicants and litigants can
2 live with. In the area of electronic filing
3 let me say first, it's really exciting to see
4 Bob Anderson's presentation on TIS. Our
5 TTABIS which is sort of a mini version of
6 that is ready for deployment we hope by the
7 end of April to a pilot team. Possibly --
8 I'm sorry, it may not be that soon, but at
9 least by the summer we hope will be ready for
10 a test with the pilot team.

11 We've worked out some of the loop
12 problems we've had with it. We wanted to
13 make sure it was in the best possible shape
14 before we deployed it to the pilot work team,
15 and that will be basically an electronic work
16 flow system for the board which will
17 eliminate in the same way that the TIS system
18 would eliminate the paper filed for an
19 application and would eliminate the paper
20 filed for oppositions. We're very excited
21 about that.

1 And also in the area of electronic
2 filing we've done preliminary work to develop
3 electronic forms by means of which we can
4 permit electronic filing of a number of
5 papers including notices of appeal, notices
6 of opposition, petitions to cancel and
7 extensions of time to oppose.

8 As there are budget implications to
9 our plans for those electronic filings, I
10 can't now say when we'll be able to accept
11 electronic filings, but we are proceeding
12 with the planning in any event. Let me also
13 say that we'll soon be making available on
14 our TTAB web page, and we do now have a
15 specific TTAB page which you can access
16 through the trademarks section of USPTO.GOV
17 home page, the database of all TTAB
18 proceedings. We hope to have that available
19 by the end of March, at least that's the date
20 we've been given at the moment.

21 And through this searchable

1 database which inside the office we call
2 BISX, B-I-S-X, you'll be able to find
3 information on TTAB proceedings. All sorts
4 of information on active proceedings and
5 terminated proceedings, including status and
6 location information, prosecution history
7 information, even the attorneys representing
8 parties and so forth. So it's one of the
9 efficiencies we hope to come from. That is,
10 we'll get fewer telephone calls for status
11 inquiry once everybody gets familiar with
12 using our web site to see what we've
13 received, where we are, what we've done in a
14 particular case.

15 And finally I had mentioned at the
16 last meeting of this committee that we had
17 taken our telephone conferencing procedure,
18 TTABY from our pilot group of three
19 interlocutory attorneys and expanded it to
20 the entire staff of interlocutory attorneys.
21 That is a method of trying to just get cases

1 back on track that have fallen off track to
2 get decisions that can be made by
3 interlocutory attorneys without a lot of
4 paper made.

5 And most of our interlocutory staff
6 now have had the chance to handle some of
7 these. It's still somewhat under-utilized I
8 think partly because it's not as well known
9 as it is going to be I hope. But in all
10 those cases in which it has been used, we
11 have a pretty universal belief among the
12 interlocutory staff that it does help, that
13 it does set cases on the right path and keep
14 them from getting out of control and to get
15 some quick decisions on some motions that
16 might otherwise bog down proceedings.

17 I know I went through that
18 extremely rapidly, but I know we're under a
19 time pressure, but I'd really like to have
20 some comments from the committee if any of
21 those issues are ones you'd like to discuss

1 with me or with each other.

2 JOSEPH NICHOLSON: With respect to
3 the teleconferencing that you just mentioned,
4 is your experience that most of those relate
5 to discovery disputes?

6 DAVID SAMS: Yes. Principally
7 discovery disputes and somewhat early in the
8 proceedings; yeah. The one thing that the
9 interlocutory attorneys have turned down when
10 people have asked for telephone conferences
11 are those cases in which they're trying to
12 get a decision on motions to compel where
13 there are dozens of interrogatories in
14 question. And this is not particularly
15 suitable for telephone conferencing, but
16 other than that, almost any kind of discovery
17 issue can probably be amenable to it I
18 believe.

19 DAVID STIMSON: David, you've
20 talked about this with our subcommittee, but
21 I thought it might be helpful for the whole

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1 committee. For the telephone conferences,
2 what is the initiative for that? Is that
3 something initiated by an interlocutory
4 attorney to either party? How does one of
5 those get set up?

6 DAVID SAMS: Yeah; it can happen in
7 more than one way. Either of the parties can
8 request it, either if they're in the position
9 of having filed a motion and want to have the
10 motion decided quickly and ask the board to
11 have a telephone conference and allow the
12 responding party to respond in the telephone
13 conference, that can be done. If a party has
14 received a paper motion from its adversary
15 and wishes the board to decide the motion
16 orally or at least hear the arguments orally
17 on the telephone, that party responding can
18 ask for the telephone conference to be set up
19 to hear arguments on the motion.

20 And in some cases, and it happens
21 less often, but I hope it's going to happen

1 more often, the interlocutory attorneys
2 themselves when they see a problem developing
3 and see that things may be getting out of
4 control with too many papers being filed or
5 too much litigation being done will get the
6 parties together and set some guidelines for
7 them to understand how we want this
8 proceeding to go, how we want to get it back
9 on track.

10 That has happened a few times and
11 it's been a successful mechanism for
12 shepherding litigation, if you will. I hope
13 to see more of it. And our interlocutory
14 attorneys I have to say are new at it too so
15 it's going to take a little time for them to
16 accustom themselves to that way of doing
17 business, but I think in the end it's going
18 to be effective.

19 DAVID STIMSON: I think that will
20 be helpful just like I understand examiners
21 are encouraged to handle things by phone. I

1 think if the interlocutory attorneys were
2 encouraged to use the phone for things like
3 that because it does sound like it's a
4 savings not only for the TTAB, but also for
5 the bar.

6 And I just wanted to state for the
7 record that David Moyer and I have been on
8 this subcommittee looking at TTAB issues and
9 wanted to thank you and the TTAB for its
10 cooperation and that we've had several good
11 discussions on areas to look at for possible
12 increased inefficiencies and where the T-PAC
13 could help out and your cooperation has been
14 wonderful. We really appreciate it.

15 DAVID SAMS: Thank you.

16 MILES ALEXANDER: Any other
17 questions?

18 LOUIS PIRKEY: When you consider
19 one judge versus the three judge panels, have
20 you considered a hybrid system whereby
21 certain cases might be designated for a one

1 judge determination?

2 DAVID SAMS: I don't believe we
3 have, Lou, not specifically. Nothing is off
4 the table, let's put it that way, but we
5 haven't specifically considered that. I'm
6 curious if you have in mind some sort of
7 let's say triage that would be useful for
8 maybe saying when it should and when it
9 shouldn't, or have you given it that degree
10 of thought?

11 LOUIS PIRKEY: Well, I would just
12 expect that there would be some cases that
13 would look to be so simple that maybe they
14 can be designated to one judge, and I quite
15 agree that there are many advantages to the
16 three judge panel. And you could keep the
17 great majority of the cases perhaps in the
18 three judge panel system and save some time
19 by having some of these simpler cases decided
20 by one judge. I mean, it's a thought that
21 you might explore.

1 DAVID SAMS: Thank you. I think we
2 will.

3 MILES ALEXANDER: Just following up
4 on that, I think you make a very forceful
5 case with a three judge panel, and there's no
6 question there are advantages to it. As you
7 may recall, my concern was that there would
8 be great advantage to three judge district
9 court panels too because they don't have the
10 expertise in a given area that trademark
11 trial and appeal judges do. So three minds
12 are almost always better than one and you
13 can't argue with both qualitative and
14 interplay.

15 One thought I had was taking some
16 of the more experienced judges and on an
17 experimental basis trying to take a certain
18 percentage of cases to a one judge court and
19 just as the district court judge is supposed
20 to know the nature of the rulings in the
21 given area so that there's consistency, I

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1 think even more so the trademark trial appeal
2 board is familiar with the cases that have
3 been decided by that one court rather than
4 the court of appeals.

5 So I would urge some
6 experimentation or an approach that tried to
7 determine whether there is a system whereby
8 we can even further reduce the backlog. With
9 all of the good work that is done, it's
10 always a shame that the aberrational case
11 that's sitting around for two years is the
12 one that the bar talks about over and over
13 again. And I was wondering whether there's a
14 way to put a cap, 20-month averages, 32-month
15 averages are very good or a weak average, but
16 should any case take two years?

17 DAVID SAMS: Yeah; and in fact,
18 they're not.

19 MILES ALEXANDER: I notice the last
20 chart showed none, but showed a group that
21 was one to two years. Should there be a cap

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1 at some point that a case isn't being
2 decided, there's a way of getting it out of
3 that -- I mean, I've had cases in which I
4 hate to move forward because I just hate the
5 case.

6 DAVID SAMS: Right.

7 MILES ALEXANDER: So that client
8 may be sitting for a long time before I get
9 to what they have to do if I don't think
10 there's any great rush on it. You have to
11 discipline yourself.

12 DAVID SAMS: I do want to just for
13 the record say that we have no cases over a
14 year old. As of January, we have four that
15 are over six months old.

16 MILES ALEXANDER: That's great.

17 DAVID SAMS: So we've made some
18 substantial progress and I hope we can keep
19 that. But you're right, we don't want any
20 cases to be out of line with the average, and
21 we try to -- and lately we've been able to

1 affect that philosophy.

2 JOSEPH NICHOLSON: Following up on
3 that and you may have mentioned this, but
4 kind of fast and I may have missed it. This
5 talks about pendency. I'm wondering if
6 there's been a decrease in actual filings of
7 motions for summary judgment. I've heard you
8 for several years now implore the private bar
9 stop filing these motions. I'm wondering if
10 anybody's listening.

11 DAVID SAMS: I don't have any
12 specific statistics, Joe, but I think there
13 are fewer just from what I've seen and we're
14 keeping a record of. Years ago we used to
15 get double digits a month and sometimes high
16 double digits a month and that's not
17 happening anymore. So I think some of the
18 message has made its way to the bar.

19 GRIFFITH PRICE: David, you
20 indicated that there's some thought that
21 interlocutory attorneys may be taking greater

1 control over the course of litigation
2 discovery implication when it appears to be
3 vergening. Is there also any thought -- and
4 what prompts my question is this. I recall
5 seeing a decision recently in which the board
6 imposed a sanction of dismissal. Is there
7 also any thought that the board might more
8 broadly impose sanctions in order to control
9 the scope of litigation?

10 DAVID SAMS: The answer's yes. In
11 some respects we have been quietly imposing
12 sanctions, and that's probably not a good way
13 to impose sanctions. You need to tell people
14 you're imposing them for them to have very
15 much effect. So we've made a conscious
16 effort to publish a number of cases in which
17 we've imposed sanctions, even sanctions of
18 judgment in egregious cases. That's going to
19 continue. And there are some within even the
20 last couple of weeks, or at least one in the
21 last couple of weeks we've marked also. So,

1 yeah, we're going to try to use the sanction
2 power to curve those abuses that do exist.

3 MILES ALEXANDER: Returning to the
4 subject that we talked about in the past,
5 more and more federal district courts and
6 even court of appeals are mandating mediation
7 in cases that are appropriate for and complex
8 cases. It would appear to me that the TTAB
9 is procurely appropriate in some of the
10 litigation that I've seen for mandatory
11 mediation for two reasons. One, it's as
12 complex as anything you would find in the
13 federal district court. And secondly, it is
14 at a stage at which you can have a decision
15 by the TTAB and then a trial de novo by a
16 federal district court and then another
17 appeal.

18 So by catching it at an early
19 stage, recognizing the complexity of it may
20 be doing the parties to the case a great
21 service. Because counsel are warriors

1 frequently and may not come to the mediation
2 table as readily as they would with the aegis
3 of the court. And I wonder what has been
4 explored in that area and whether the two
5 Davids have discussed that at all.

6 DAVID SAMS: I think, Miles, we
7 discussed it in a kind of general way, and my
8 input on it has been from the board's point
9 of view, mediation is obviously a good thing
10 because we have less to do. However, taking
11 the next step to make mandatory mediation in
12 certain cases, again, I don't have too much
13 of a problem with it philosophically, but
14 it's something before we proposed it as a
15 rule, we would have to feel pretty sure that
16 in general, not on this committee, but the
17 bar as a whole was in favor of it. I would
18 hate to go out there, sort of be shot down
19 with the proposed rule-making. I want to
20 make sure that it's been thoroughly embedded
21 before we make that kind of proposal.

1 MILES ALEXANDER: Let me suggest
2 that federal district courts didn't
3 necessarily invent it before the bar, before
4 they decided that this was an appropriate
5 rule to have. And I believe that you all are
6 in the best position to determine whether
7 that's a constructive step to take. Having
8 had all of the experiments that exist in
9 district courts around the country that in
10 fact mandate mediations, there's been enough
11 studies on it in terms of high percentage of
12 the cases that are settled where that is done
13 at an early stage compared to what happens
14 when it is not done is irrefutable evidence,
15 based in fact the trademark bar is on record
16 in encouraging it.

17 We have the national panel, you
18 have the Illinois rules that have adopted the
19 national panel, and it seems to me that it is
20 not a matter that really is subject to a lot
21 of debate anymore. Everybody in the bar I

1 have ever heard discuss it is overwhelmingly
2 in favor of it. There's always a few people
3 who want to litigate, but I would urge the
4 TTAB to look at it independently with all the
5 evidence that exists, and I think you will
6 find it to be an absolute boom to
7 accomplishing what you want to do in terms of
8 backlog, but more important, serving the
9 interest of the public and the clients that
10 are involved in litigation.

11 DAVID SAMS: Well, it is something
12 we definitely want to look into and this
13 committee can be of great help to us in doing
14 so.

15 JIM TOUPIN: I had a couple
16 questions about that subject having both
17 participated in mediation in the District
18 Court, District of Columbia and set up
19 mediation programs at the agency I was
20 formally with and participated in opposition
21 proceedings before the TTAB. First it struck

1 me that at least some litigants who have --
2 may have broader commercial conflicts than
3 what is strictly the subject of their
4 opposition proceedings may in fact use the
5 opposition proceeding as a form of mediation
6 or arbitration, if you will.

7 And second, that given that
8 trademark disputes may often bear on broader
9 commercial disputes, that if cases are sent
10 to mediation by the TTAB unlike district
11 court, the mediation may concern subject
12 matters that are beyond the scope of the
13 kinds of issues that the TTAB decides. And I
14 was wondering whether you had any thoughts
15 about whether the environment of the TTAB is
16 different from the district court in terms of
17 the utility of mediation?

18 MILES ALEXANDER: Yes; I do. I
19 think in posing my suggestion, I use the
20 expression appropriate cases. Clearly if
21 somebody is going to try to declare a famous

1 trademark generic and they're dedicated to
2 doing that, mediation would be a waste of
3 time. Just as in the district court, there
4 are cases in which the district court judge
5 understands that you're not going to be able
6 to mediate Armageddon type of issues where
7 there's only going to be a resolution one way
8 or the other, and people are willing to
9 gamble on that.

10 On the other hand, there's an
11 enormous amount of TTAB and federal district
12 court litigation which on the face of it is
13 appropriate for mediation. And more
14 importantly, the TTAB is probably even more
15 appropriate for the exact reason you gave.
16 It is the beginning of much more extensive
17 litigation with issues outside those directly
18 involved in the opposition and cancellation
19 proceedings which issues are likely to be
20 resolved as part of the whole solution to the
21 problem if faced at an early stage. Just as

1 the 11th Circuit has a selective group of
2 cases in which they ordered a mediation
3 because they made the decision that those
4 cases really don't have any business taking
5 up the time of the court. They should be
6 resolved between the parties.

7 I believe that same could be done
8 by looking at TTAB litigation and determining
9 that certain cases shriek after that type of
10 resolution at an early stage, others don't.
11 So I don't think every case ought to be
12 subject to mandatory mediation, but I do
13 think there are many cases which could lower
14 the backlog of the docket by ordering the
15 mediation. And all of the statistics
16 indicate being -- the incredibly high
17 percentage of cases that go to mediation that
18 are resolved. These lawyers tend not and
19 clients frequently tend not -- clients tend
20 not to talk face-to-face unless they're going
21 to mediation. And clients have one thing in

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1 common that bring them together in almost
2 every case, they all hate to pay legal fees.

3 Anything else by anyone else?

4 Well, I want to thank everyone for their
5 participation. I thank Anne and David Sams
6 and everyone at the USPTO for very articulate
7 and helpful information. I will follow up
8 with the P-PAC with respect to proposal for a
9 joint meeting. If they decline, keep May 4th
10 marked on your date, otherwise mark May 3rd
11 and we will get back to everybody on it. Is
12 there any other matter for new business or
13 good and welfare of the group or anything
14 else from anyone?

15 JOSEPH NICHOLSON: Do you want to
16 discuss the makeup of this subcommittee on
17 the record or off the record?

18 MILES ALEXANDER: I think we might
19 as well do it on the record. There's nothing
20 in executive session that calls for it.
21 Okay. Well, let me just go around and begin

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1 with Griff and ask you to indicate which
2 subcommittee you understand you're on, and if
3 you're not on the one you want to be, let me
4 know.

5 GRIFFITH PRICE: Electronic filing,
6 and I indicated today that I'd be happy to
7 work with you on budgetary matters.

8 JOSEPH NICHOLSON: I believe I'm on
9 the electronic subcommittee as well.

10 SUSAN LEE: I believe I'm on the
11 trademark examining.

12 DAVID MOYER: I'm on the TTAB
13 subcommittee.

14 HELEN KORNIIEWICZ: I think I'm
15 working on personnel issues whether that's
16 actually a subcommittee or not.

17 MILES ALEXANDER: It is.

18 LOUIS PIRKEY: And I just joined
19 the TTAB.

20 DAVID STIMSON: TTAB committee, and
21 Louis will have to change it in a few days.

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1 JOHN ROSE: I thought I was on the
2 human resources management practices
3 subcommittee.

4 MILES ALEXANDER: Yes; human
5 resources and personnel.

6 HOWARD FRIEDMAN: Trademark
7 examiners, personnel and also participating
8 on the budget issue.

9 LAWRENCE ORESKY: I am interested
10 in the budget committee.

11 MILES ALEXANDER: Anything else by
12 anyone else? We stand adjourned.

13 -oo0oo-

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